# SENATE—*Friday, October 30, 1987*

*(Legislative day of Friday, October 16, 1987)*

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the Honorable BOB GRAHAM, a Senator from the State of Florida.

## PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

*So God created man in his own image, in the image of God created he them, male and female * * *. And God blessed them, and God said unto them, "Be fruitful, and multiply, and replenish the earth, and subdue it; and have dominion over it * * *."*—Genesis 1:27-28.

Almighty God, Sovereign Lord of history and the nations, You created us to "subdue the earth and have dominion." You created us to be sovereign people. You guided our Founding Fathers to a political system in which the people are sovereign and Government receives its "just powers from the consent of the governed." As the election approaches, remind the people of their solemn and sacred duty at the polls. Help them to see that our political system will not work as it should if the people abdicate their sovereignty. Help them to understand that special interests quickly fill the vacuum of their absence from the polls. Remind them that freedom and responsibility are inseparable—that to neglect citizen responsibility is to jeopardize liberty. Gracious Father, save us from apathy and cynicism. Renew us in the vision and integrity of our forebears. To the glory of Your name and in faithfulness to our incredible legacy. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, October 30, 1987.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BOB GRAHAM, a Senator from the State of Florida, to perform the duties of the Chair.

JOHN C. STENNIS,
*President pro tempore.*

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

## RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin is recognized for not to exceed 5 minutes.

The Senator from Wisconsin.

## BAD ADVICE FROM AN EMINENT AMERICAN ECONOMIST

Mr. PROXMIRE. Mr. President, Robert Eisner is the president-elect of the American Economic Association. As such he is highly respected by his peers as one of this country's truly outstanding economists. Dr. Eisner has taken a dramatically different view of the relationship between the stock market collapse and the Federal deficit than the overwhelming majority of Members of the Congress and the leading economic spokesmen in the administration. Eisner says forget the deficit. In his view it has nothing to do with the stock market crash. Eisner opposes cutting Federal spending. He opposes increasing Federal taxes. So who is right? This Senator agrees with my congressional colleagues and with the administration that the huge deficits are a central cause of the collapse of the stock market. I think Mr. Eisner is wrong.

But Robert Eisner is a top-flight economist. And he makes some arguments supporting his position that merit an answer. First, he contends that the lesson of history is clear. Larger deficits have not brought on market declines. Budget deficits unless brought on by recession have stimulated the economy and pushed the Dow Jones Index higher. Eisner argues that:

> Deficits entail more spending by the private sector when caused by tax reduction or more public spending when brought on by Government payouts—or both.

He points out that the bull market that zoomed along from 1982 to 1987 was accompanied by a series of record deficits, climaxing in the $221 billion monster in 1986. Eisner's coup de grace is that the market didn't fall until 1987 when the deficit came down by an astonishing $73 billion in 1 year, with a deficit of "only" $148 billion in fiscal 1987, just concluded last September 30.

Why is this Eisner reasoning wrong? It's wrong because Dr. Eisner does not face up to the accumulated consequences of 5 years of super deficits as American investors finally did in the last couple of weeks as the stock market drop shows. And Eisner totally ignores the private sector "deficit" that is far bigger than the Federal but imposes a parallel, long-time burden on the economy. The fact is that American households have been rapidly increasing their debt to a much higher level than the Federal debt. Households have also sharply cut their savings rate. The debt of the American business sector has grown still greater. In every sector of the American economy debt is growing with breathtaking speed.

So what is Dr. Eisner's policy advice to the Federal Government? It is to keep up the spending. Do not increase taxes. And stop worrying about the budget deficit. It is, second, for the Federal Reserve Board to ease monetary policy to bring down interest rates. Dr. Eisner wants interest rates "to be driven further down and kept down." That, says Eisner, "would lower the deficit as it improves the economy."

Now, Mr. President, this is a very alluring big-gains-without-pains scenario. After 30 years in the Senate, I have learned that the easiest and most popular action I can take is to vote to hold down or reduce taxes. The second easiest and most popular action I can take is to increase popular spending programs. And the third major temptation is to use whatever authority I have as chairman of the Senate Banking Committee to lean on the Federal Reserve Board to bring down interest rates by pouring credit into the economy. These seem to be the prescriptions of the president-elect of the American Economic Association. In this Senator's view this is a prescription for disaster. And yet, although conventional wisdom in the political and business community seems presently to be strongly leaning against this advice, the Eisner policies are the policies that in the judgment of this Senator, the Congress, American households and American business will pursue at least until the stock market crash has been followed by a full-fledged recession that may easily turn into the first genuine depression in 50 years. The deficit did drop by a massive one-third in 1987. But that was a one-time drop. It will almost certainly

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

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bounce back up again in 1988 and when the recession strikes, as it always has and inevitably will again in our free economy, the deficit will explode to $300 or $400 billion each and every year or more. Meanwhile American households and businesses will continue on their irresponsible way of borrowing more and spending more, until recession hits. Then the private contraction in spending by households and businesses will be swift, deep and this time, it will be prolonged. The absolute iron necessity for homeowners to pay interest on their mortgages will absorb more and more of income after paying for the unavoidable necessities of life. Businesses, too, will have to commit more and more of their diminishing cash flow into paying interest on their crushing debt to avoid insolvency and bankruptcy. With savings at an all-time low in relation to income and debt at an all-time high, Dr. Eisner would rely on the Federal Reserve Board as the engine that can churn out abundant supplies of credit and keep interest rates down. So what is the end result of the Eisner prescription? It is the consequences that has haunted virtually every country that has found itself mired in the debt dilemma that burdens our country. If we pursue the Eisner monetary policy prescription with a flood of credit we will drive prices and then interest rates out of sight. That superinflation will give us the worst possible economy: Super inflation and superunemployment.

The first step toward a solution to this dilemma is to face it squarely. Recognize that our debt is far too big. Recognize that the reduction of that debt will be painful. Acknowledge that both the Federal Government and the private sector must reduce their debt, the sooner we reduce it the better. That means we must cut spending—all spending—public and private. We must increase private savings and public taxes. We must acknowledge that this will slow growth. It will bring on a recession sooner. It will sharply increase unemployment. But it will in the long run save our economy.

I ask unanimous consent that this New York Times article by Robert Eisner be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 25, 1987]

DON'T BLAME THE DEFICIT FOR THE CRASH

(By Robert Eisner)

CHICAGO.—In the aftermath of Black Monday, almost everybody is knocking the deficit. And so it has always been, usually in the face of all reason and logic.

Republicans used to do it, blaming Democrats from Franklin D. Roosevelt on. And now Democrats think they can make good political capital, blaming Reagonomics and the Republicans.

It didn't take the politicians and financial wizards long to find the most convenient, and conventional, whipping boy.

Their argument goes this way: The market crashed because of those huge Federal deficits and the accompanying exploding debt. We can't keep "living beyond our means" without facing a final judgment. The market saw this and finally panicked in a (collectively futile) effort to get out in time. The remedy is clear. We have to get our act together and cut that deficit.

The one trouble with this line of argument is that it is wrong.

Throughout history, larger deficits have not brought on market declines. Over some 30 years, at least, increases in the budget deficit have been associated with concurrent and subsequent increases in the Dow.

The explanation is not hard to find for those willing to keep their eyes open.

Bigger deficits, unless brought on by recession, tend to stimulate the economy. Deficits entail more spending by the private sector when caused by tax reduction or more public spending when brought on by Government payouts—or both.

The most recent confirmation of this is the great five-year bull market that accompanied the hugely expanded budget deficits from 1982 on. And—the purveyors of conventional wisdom should think about this—in the last year the deficit has come down enormously. It was a tremendous $221 billion in 1986 and about $148 billion in the 1987 fiscal year, just ended on Sept. 30.

If large budget deficits caused the market to crash, why did the market roar along when the deficits were at their greatest and tumble only after the deficit fell by 33 percent?

There is indeed an explanation for what brought the market down, and that is rising interest rates.

As every investor knows, rising interest rates mean falling bond prices and, unless rising profit expectations compensate, falling stock prices along with them. Interest rates have been rising for some time, but with Alan Greenspan's ascendancy to chairman of the Federal Reserve this past summer, the rise turned into a rush. As many commentators warned at the time, restricting the money supply in a misguided attempt to combat inflation was exactly the wrong way to go.

It is often contended that the budget deficit brings on rising interest rates. Again, the facts are otherwise. The deficit rose from $79 billion in 1981 to $128 billion in 1982, and averaged over $200 billion from 1983 to 1986. Interest rates, as measured by 10 year Treasury securities, fell during this period—from 13.91 percent to 7.68 percent, and inflation fell sharply as well. From August to September of this year, as news came in that the budget deficit was running less than expected, those same interest rates, already up to 8.76 percent, soared to 9.42 percent.

By stimulating economic growth, larger budget deficits may put some upward pressure on interest rates. But the overwhelming, Dominant factor in interest-rate movement is monetary policy. And that is determined by the Fed.

It is, after all, a familiar matter of supply and demand. Interest rates are the price of borrowing or holding money. Given the demand for money if the Fed restricts the supply, interest rates—the price of money—will rise.

There is hope. Whatever the mistakes of the past, after the debacle of Black Monday, Mr. Greenspan and the fed sharply reversed field. They announced publicly that they would make money and credit amply available, and backed that up with appropriate action in the securities markets. Interest rates promptly plummeted, which meant that bond prices rose sharply. With that, Wall Street—and markets around the world—rebounded.

For that recovery to continue, and to avoid a serious recession, this monetary easing must be sustained. Interest rates must be driven further down and kept down. That indeed would lower the deficit as it improves the economy.

But the conventional wisdom of lowering the deficit either by raising taxes or cutting Govenrment expenditures—whatever the merits on other grounds of reducing certain swollen budgets, such as those of the Pentagon and farm programs—threatens economic disaster. It is a mindless throwback to the economics of Herbert Hoover. We must not forget where that led.

Mr. PROXMIRE. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin yields the floor.

## RECOGNITION OF SENATOR ROCKEFELLER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia is recognized for not to exceed 15 minutes.

The Senator from West Virginia.

## THE ECONOMY

Mr. ROCKEFELLER. Mr. President, Monday's stock market plunge—the second worst day in the market's history—should erase from everyone's mind the possibility that panic on Wall Street has subsided; that last week was simply an aberration; or that our problems are in any way behind us.

I am not an expert on the workings of the financial markets. I will leave to others more knowledgeable the responsiblity of figuring out whether program trading or the increasingly global nature of the financial market fundamentally changes the game, and whether new forms of regulation are needed.

But I do know this:

The stock market here, and the financial markets around the world, are reacting to the fact that the U.S. budget and trade deficits have unbalanced the world economy and pulled it to the brink of real danger;

I do know that the stock market, and the financial markets around the world, are waiting for concrete evidence that the United States is taking serious steps to get its economic house in order;

I do know that if we do not take those serious steps, quickly and convincingly, we may provide the catalyst for a downward spiral which will touch off a serious recession here and around the globe.

There is ample evidence that we have been on the wrong economic course since 1981, but I see no benefit to trying to assign blame at this point. Right now, there is a broad consensus that the U.S. budget deficit is the principal culprit for an unstable world economy.

It is the U.S. budget deficit that made us dependents, to the tune of tens of billions of dollars annually, clinging to foreign lenders and investors like a lifeline.

It is the U.S. budget deficit that puts us in the difficult position of bringing down the dollar in order to help cure our trade imbalance, which then forces us to raise interest rates to keep the foreign money flowing.

It is the U.S. budget deficit which reflects the irresponsible fiscal policy here, which will ultimately invite the same cure it did in the early 1980's: tight money and a recession.

I was Governor of West Virginia during the recession of 1981-82. I cannot forget what it did to the people of my State and to the dreams of the people in our State of West Virginia. As a Senator, I will do everything in my power to help prevent the recurrence of such a downturn.

Unemployment in my State went from 6 percent to a staggering 21 percent. The State was devastated. People thrown out of work, their businesses closing, losing their homes—all because of the national recession, the global recession, and events completely beyond their control.

I believed then, and I believe now, that while the business cycle may be an inevitable phenomenon in part, Government policies can and must intervene in our economy to shape its direction.

Wise Government policies can prevent a recession, or lessen the impact of one on its way. Unwise Government policies can bring on a recession, or intensify one that would otherwise be mild.

Government policy brought on the last recession. James Schlesinger once described the 1981 tax cut as "the single most irresponsible fiscal act in history." That $750 billion tax cut, coupled with a dramatic increase in defense outlays, did terrible fiscal damage. Paul Volcker and the Federal Reserve Board had already been committed to combating inflation as their first priority. Given the wildly stimulative fiscal policy, they saw no choice but to crack down even tighter on the monetary side, raising interest rates, choking off economic activity, causing the deepest recession since the Great Depression.

Today, the circumstances are different, but the results could be very much the same. The enormous budget and trade deficits paint us into a very tight corner. We cannot keep the economy going without a substantial "fix" of foreign capital. But we cannot pull in that needed foreign capital without keeping interest rates up, particularly at a time when the value of the dollar keeps declining. The chances that interest rates will be high enough to attract the needed capital, but low enough so that the economy does not stall out, are not good at all. The market's plunge, and its continuing volatility, reflects the lack of confidence that our country can walk that particular tightrope.

The solution, it seems to me, is to reduce our budget deficits, to reduce our dependence on foreign capital, to restore faith in the rest of the world in our economic soundness, and to lower interest rates needed to draw in that capital. We cannot do everything alone; we have forfeited a great deal of fiscal independence thanks to our irresponsible economic policies. We will need the commitment of Japan and Germany in keeping interest rates low, to spur the global economy. But we will be in a far stronger position to ask for that commitment, if we get our own fiscal house in some kind of order.

In the next few weeks, while the world waits, many voices will be heard arguing about how hard it is to cut spending, and how impossible it is to raise taxes. None of us welcome the need to vote for hard spending cuts, or to raise taxes for that matter. Coming from a State which is still struggling to recover from the last recession, I certainly feel that way. It would be much more comfortable to believe that it will all work out without any action on our part in Congress. But that would be pretending and risking the future of this country for the sake of our own sense of political security.

I have not reached any conclusion about the best way to reduce the deficit; I have no particular package of proposals to endorse. But as we discuss the options over the next few days and weeks, I hope that we will focus very hard on just how painful and damaging the alternative—doing nothing—might be.

No one wants to freeze spending. But what if an across-the-board spending freeze could help prevent a recession which, in turn, would force us to make deep cuts in critical programs later on?

No one wants to raise gasoline taxes. But what if all of us paying a little more at the pump could help prevent a recession which would throw millions of Americans out of work?

No one wants an income tax surcharge. Frankly, I would prefer a third bracket for upper income taxpayers, or further loophole closing, or other steps that would insure that those who have benefited most from the Reagan tax cuts would pay more. But we may not be able to agree on that kind of package. What if a 2- to 3-percent surcharge on all taxpayers could help prevent a recession which would devastate families and communities all over the country?

We should act now, while the economy remains strong—by some measures—to prevent a downturn. It may be difficult to reduce spending and raise taxes now. But if we fail to act, and the economy slips into recession, revenues decrease, transfer payments automatically increase, and the Federal deficit will soar uncontrollably—leaving us in the bind of figuring out how to stimulate the economy when the deficit is already in excess of $200 billion.

Moreover, every State with a constitution that mandates a balanced budget, and that is most of them, will be forced—just as they were in 1982—to cut spending, raise taxes, and inflict pain at the worst possible time. It would be far better to take difficult steps now, while we still have some options and control, than to be forced to act later while in a downturn.

The American people are not oblivious to this problem. They have been anxious about the economy for at least 2 years. They knew that we could not go on buying without selling; consuming without producing; borrowing without saving. They knew we would hit the wall at a certain point, and that bills would have to be paid. They have identified the budget deficit and the trade deficit as our Achilles heels.

They would have listened to the truth, and appreciated hearing it, from the President and other political leaders even before the panic on Wall Street.

Now, we can no longer avoid the issue. The panic from Wall Street has frightened people across the Nation, and justifiably so. It can have a positive effect—a cathartic effect actually—if we capitalize on it to take the hard steps which should have been taken before, if we had had the political will and courage to do so.

I believe that the President and congressional leaders should go considerably beyond the $23 billion in deficit reduction required by Gramm-Rudman-Hollings. I hope they will put together a package—and I think it needs to be a multiyear package—of spending cuts and revenue raisers that clips an additional $10 to $20 billion off the deficit, which would mean rather than talking about $23 billion, we probably ought to be talking about $33 or $43 billion in deficit reductions.

In my judgment, that would be the most desirable signal to the financial markets, and to other countries that, in fact, we were getting our fiscal house in order. That kind of agreement in hand would ease the way for Fed Chairman, Alan Greenspan, to commit to keeping money loose and interest rates low. And that kind of agreement would provide us with

much better leverage in urging Japan and Germany to lower their interest rates as well.

The time for business as usual came to an end quite a while ago. The recognition that it ended came last week. If the elected leaders of the country do not respond forcefully and forthrightly, we will do a great deal of damage to a great many people. And then we will richly deserve the contempt sometimes heaped upon us.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia has yielded the floor.

## RECOGNITION OF SENATOR BOREN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oklahoma is recognized for not to exceed 10 minutes.

## COOPERATION AT THE ECONOMIC SUMMIT

Mr. BOREN. Mr. President, I thank the Chair and I want to compliment my distinguished colleague from West Virginia for the remarks that he has just made. They are to the point and I hope that our colleagues will heed the warning that he has issued.

We have had, in essence, with the collapse of the stock market, a warning sign. Kind of a warning sign of a massive heart attack that is looming out in the future for this country, that could do untold damage to this country if we do not heed this warning signal and change our ways and change our behavior patterns and deal with the fundamental problems of our economy. I compliment him for his remarks and I hope that our colleagues will read them in the RECORD. I hope they have been listening to them in their offices. I hope that action will be taken.

Mr. President, these are the times in which we all should stand back and reflect about our responsibility and about how history may judge us in this time.

As I look back over the past 4 or 5 years, as a Member of the Senate of the United States, Mr. President, I must say in all honesty that I look back with frustration. I look back on days filled with frenzied activity in which we start early in the morning and work until late at night, probably averaging 12- and 14-hour days, with schedules that keep us going often into the weekend either with work here or work dealing with our constituents back home. It is a tale of frenzied activity and it is largely a tale of frenzied activity leading nowhere, that does not begin to deal with the fundamental problems of this country.

We have gone on mortgaging the future of our children and the next generation. We have failed to deal with a towering trade deficit that threatens to reduce the real standard of living of the next generation of Americans, unless it is turned back.

Mr. President, in 4 short years we have gone from being a creditor nation to a net debtor nation to the rest of the world. In 4 years, we have wiped out the net contribution in terms of international investment of four generations.

Unless we change the trend line that we are now on, by the year 2000, the time at which those who are serving us as pages in the Senate this morning will be into their own adult careers, this country will face a choice. Either we will have to cut in half the imports of goods and services from the rest of the world or we will have to find a way to double our own exports into the world market.

That cannot be done painlessly. It means stopping much of the consumption that we are now doing and plowing it back into saving and plowing it back into investment. It means deferred gratification, deferred consumption. It means an old-fashioned word: stark and deep sacrifice; a changing of the real standard of living of the American people.

If we do not stop now we are threatening to hand on to the next generation a very diminished heritage and diminished opportunity because we have lived beyond our means.

How, Mr. President, will history judge us for that? And when history makes that judgment, will history look back to see who scored partisan points in the debate? Will they look back to see whether it was the fault of an intransigent President? Or will they look back to see whether or not it was the fault of a profligate Congress that continued to pile on more and more programs when we could not pay for them to curry favor with the voters?

Mr. President, the historians of the future are going to judge us all harshly because we have done virtually nothing of significance in the last 4 or 5 years to deal with the fundamental problems of this country.

Right now—and I do not cast aspersions upon it, because it is an important matter—we are spending time discussing behavior on airplanes and the structure of airlines when we should be discussing the fundamental structure of the economy to determine whether or not people are even going to be able to afford air travel in the future if we do not change direction.

No, what have we done? We have passed an unwise tax bill that further subsidizes consumption when we need more savings and investments. We have disinvested in our educational system at a time when we must rebuild our skill levels if the next generation is going to be skilled enough to have a chance to compete in the international markets. We have failed the test of history, Mr. President, and that is why so many Senators in this body feel a frustration in being a part of this institution when our time is nattered away in trivia, day after day, and we do not deal with the fundamental problems facing this country in any meaningful way.

It is often said, Mr. President, and it is sometimes true, in the course of debates, in the course of decisionmaking in this body, that we must band together on one side of the aisle or the other to make things happen. It is appropriate at times in the political process, for the issue to be joined between our two parties. It is important, at times, for Republicans to be united on issues and Democrats to be united on issues.

But, Mr. President, the country now is looking at us not to see if we can unite as Democrats, not to see if those on the other side of the aisle can unite as Republicans, to battle each other on the subject of the budget; not to see whether the President and the White House will stand firm to battle the Congress; not to see whether the Congress will stand firm to battle the President. The country is looking at us to see if we can unite, not as Democrats and Republicans, but as Americans to stand together to solve this problem.

Mr. President, I hope we will declare an immediate moratorium on trying to cast blame. I hope we will not hear one other word from Members of the Congress on this floor about who is to blame for the problem. We are all to blame until we get together and take action in a cooperative and unified basis to solve it.

I urge the President to call the collective congressional leadership, the negotiators, together, himself.

I urge him to sit at the head of the table. Five hundred and thirty-five people cannot get together as a committee to deal with this crisis. We have but one President. He must sit at the head of the table. He must call the leaders together. I hope he will call them together in a place in which they can be, really, separate and apart from the rest of the world. I hope he will call them to Camp David. I hope he will do so as soon as possible. I hope he will take those leaders to Camp David and sit down together with them and say: we are going to meet together until we reach an agreement, a bold agreement, one that will go beyond a mere $23 billion in deficit reduction; one that will give us in the neighborhood of $35 or $45 billion of deficit reduction; one that will call upon all of us to share; one that will add to the package that we have been discussing, an across-the-board freeze in which all Americans will make some

sacrifice to help bring down the budget deficits.

Mr. President, if the President of the United States were to call together the congressional leaders to Camp David, in this kind of situation the eyes of the country would be focused upon that group. Every member of that group would be hesitant to walk away from those negotiations until they ended in success; until they could leave that place with an agreement to announce to the Nation.

The political stakes would be so high, those participating would realize that they could not afford to leave those negotiations without an agreement because of the impact it would have on the confidence of the American people were the negotiations to break down. It would set in motion a series of forces that would bring us to the kind of cooperative, unified, bipartisan agreement on the budget that we must have. And we must have it now.

We cannot legislate in due course. We do not have several days. We do not have several weeks. If we reach an agreement after weeks and days of negotiations and arguing and bickering, that agreement will have much less positive and impact on the country than it will have if it comes soon.

Mr. President, we will have to play our part in that kind of process. Three hundred and thirty-five Congressmen and Senators cannot crowd around the negotiating table. If we want our leaders to lead, we must be prepared to follow. That is something that, in this body, we are sometimes loath to do.

I feel sorry for the distinguished majority leader as day in and day out he struggles with the schedule and he struggles to make this institution work. Every single one of us, all 100 of us are so jealous of our prerogatives.

Mr. President, these are not normal times. These are not the times in which we can legislate in the normal fashion. The leaders simply must go together and I want to announce right now that if the President of the United States and Senator BYRD and Senator DOLE and Speaker WRIGHT and Mr. MICHEL and those that are negotiating with them can reach an agreement through this kind of process that will bring down the deficits in a fundamental way, that this Senator will support it. That is another reason for having that leadership taken off to a different location.

If they are meeting here in Washington, there will be reports to the press every break. The negotiating strategy of each side, the differences of opinion, will be out for public display at a time in which we need a display of unity. There will be pressures for our leaders to come back and continuously consult with us; hold caucuses, consult with us, get their instructions.

Mr. President, that will not work. That will not bring us to closure on an agreement. There is a sense of urgency in the country. People do not understand why we have not already reached an agreement. They do not understand why we have negotiating sessions that are mere photo opportunities instead of real negotiating sessions to reach an agreement.

I happened to be in my home State last Monday and I can tell you people were puzzled. They thought there was going to be a meeting and they thought there was going to be an agreement. There was a meeting and there were photographs. When will we wake up and live in the real world and realize we are dealing with fundamental problems that have to be dealt with?

We ask ourselves how have we skated along so long? How has the stock market stayed so high so long with the budget deficits and trade deficits eating away at the basic health of the economy? Mr. President, the time of reckoning has finally come. The people have finally recognized economic reality and they are looking to us to do something about it, and we simply must have leadership at this time. In order to have leadership we in the Congress must be prepared to follow our leaders as they get together and they work together to come forward with a bold agreement that will enable us to succeed.

So I appeal, Mr. President, to the President of the United States, I appeal to the leaders in the Congress, and I appeal to my colleagues in the Congress: Let us put in motion now a series of meetings, uninterrupted meetings, that will not end until there is an agreement, without reports to the press, without reports to the Congress.

Let our leaders get together in a bipartisan fashion and come up with an agreement, an agreement that will head this country in the right direction and then let us, the 535 Members of Congress, have the courage to back our bipartisan leadership in the decisions that must be made for this country.

Only then, Mr. President, will history say that this Congress and this President have met their responsibility to the American people. To continue with business as usual—and this Senator feels strongly—if we do not get agreements, we should consider stopping other business of this country until we get on to dealing with the fundamental problems. That is what we must do. If Congress must recess for 2 or 3 days to allow such a meeting to take place, then that should be done. We must deal with the fundamentals instead of wasting our time on trivia at a time when the country faces a crisis.

The PRESIDING OFFICER (Mr. BREAUX). The time of the Senator has expired.

## AIR PASSENGER PROTECTION ACT

The PRESIDING OFFICER. The hour of 9 o'clock having arrived, under the previous order the Senate will resume consideration of S. 1485, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1485) to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Adams Amendment No. 1106, to amend the Federal Aviation Act of 1958, to ensure the fair treatment of airline employees in airline mergers and similar transactions.

(2) Adams Amendment No. 1107 (to Amendment No. 1107), in the nature of a substitute.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I yield myself 2 minutes.

Mr. President, I ask unanimous consent that no further amendments be in order to amendment No. 1106 by Mr. ADAMS.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, and I shall object, that was not part of the agreement yesterday. It is not this Senator's intention to offer an amendment. There may be amendments from other Senators. It certainly is not my intention. It is my intention to have a vote, even an up or down vote. But it may be that other Senators would wish to have a tabling motion. I have heard that discussed. I am not sure.

There are some Senators beside this Senator who may wish to have additional amendments.

I might clarify this with the majority leader. I believe the Senator from Washington has an amendment already amended in the second degree, but there may be amendments dealing with the subject matter should the Senator's amendment be adopted.

Mr. BYRD. Mr. President, yesterday I think it was the feeling among all of us that the amendments would be restricted to the first- and second-degree amendments offered by Mr. ADAMS and that the Senate would vote thereon. The amendment in the second degree is a substitute amendment. Therefore, the first-degree amendment, the language to be stricken, is open. So I would hope we would get consent that no amendments thereto would be in order.

I will ask once again, if the Senator will permit me, to get consent to that effect.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the majority leader?

Mr. NICKLES. Again I might tell the majority leader I personally have no objection to that request, but feel I must object to preserve the rights of other Senators who have an interest in this legislation, one or two of which have indicated that they may wish to offer an amendment pertaining to this section or this amendment should a motion to table not succeed. It is personally this Senator's intention, I will tell Senators, to have a straight up or down vote.

This is a close vote. I know that. It is an important vote for the Senator from Washington and other Senators. But because of that fact, and to protect the rights of those Senators, I will have to object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. Mr. President, I respect the Senator's right to object. I will have an amendment to the amendment which I will offer when time has expired.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, we debated this amendment at length last night. I appreciate very much the statement of the majority leader.

I wish at this point to simply state once again that this is a most important amendment. It clarifies and once again states the intention of Congress to have the labor protection provisions that were originally included in the Deregulation Act of 1978 included as part of ongoing merger operations which the U.S. Government controls.

We have terminated the role of the Department of Transportation in this and it goes to the Department of Justice. Fittingly, so, the labor protection provisions go to the Department of Labor. The Department of Transportation has not exercised this authority, as was pointed out in the debate last night. They have not really exercised merger authority, even when the Department of Justice has objected to a particular merger.

I know this morning this time was basically reserved so that any opponents could state their further objections. The Senator from Oklahoma and I have debated this extensively. So, at this time, Mr. President, I will reserve the remainder of my time in order to give the opponents an opportunity to raise whatever questions they wish to raise.

The PRESIDING OFFICER. The Senator from Washington yields the floor and reserves the remainder of his time.

Who seeks recognition?

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, it is my understanding, and I will ask the majority leader, that it is anticipated that we will have a vote on this amendment or a vote relating to it at 9:30. Is that correct?

Mr. BYRD. Yes.

Mr. NICKLES. And that will be a 30-minute rollcall vote?

Mr. BYRD. Yes.

Mr. NICKLES. I thank the majority leader.

Mr. President, last night we had a good debate on the issue, and I do not know that we need to rehash everything that was stated.

I figured last night one of the reasons why Senators would or, in my opinion, should oppose this legislation, if they support the underlying legislation, is that this amendment by the Senator from Washington will, in effect, cause the entire legislation to go down.

I have a letter from the Director of the Office of Management and Budget, Mr. Miller, which states:

Consistent with our earlier position on S. 724, if the Adams amendment is adopted, the President's senior advisers would recommend that he veto the bill.

So if you are not interested in the underlying bill, maybe one way to kill the bill would be to support Senator ADAMS amendment because in all likelihood it will kill the underlying bill. Maybe that is what some people would like to do. I do not know. I have heard that there is support for the bill from the Senator from Kentucky and others. But I think Senators should be aware that adoption of this amendment would in all likelihood bring about a Presidential veto.

Mr. President, I ask unanimous consent to have this letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE
OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
*Washington, DC, October 30, 1987.*

Hon. DON NICKLES,
*U.S. Senate, Washington, DC.*

DEAR DON: This letter is in response to your inquiry regarding the amendment to be offered by Senator Adams to S. 1485, the Air Passenger Protection Act of 1987, which would add the labor protection provisions contained in S. 724, the Airline Merger Transfer Act of 1987.

Consistent with our earlier position on S. 724, if the Adams amendment is adopted, the President's senior advisors would recommend that he veto the bill.

Sincerely yours,

JAMES C. MILLER III,
*Director.*

Mr. NICKLES. Mr. President, that veto would be a good veto. It would be a veto that is well deserved because the Senator's amendment, although well-intentioned, is badly, badly flawed. It is an amendment that my colleagues need to be aware of because its language is very direct.

It says, "In any case in which the Secretary" of Labor "determines that the transaction, which is the subject of the application," basically talking about airline mergers or talking about the sale of a number of assets between airline companies—listen to this language; this is absurd language—"would tend to cause reduction of employment or to affect adversely the wages and working conditions (including seniority) of any air carrier employee, the Secretary shall impose labor protection provisions."

Now think of that. If you have any proposal or merger and application of airline companies or assets, "If it would tend to cause"—if I may have the majority leader's attention. "If it would tend to cause"—what kind of language is that?

"If it would tend to cause any reduction in employment to affect adversely the wages, working conditions of any airline employee, the Secretary shall impose"—it does not say "may." It says "shall" impose labor protection provisions "if it affects any employee."

I used to run a manufacturing plant before I was in the Senate. We made decisions every day that would "tend to cause" or someone could easily say it would "tend to cause" or may "tend to cause" or adversely affect someone's employment of any employee. We are talking about major companies. I ran a small business. But that would still apply to any decision that any organization is making.

We are talking about big companies now. In most cases we are talking about thousands of employees. I cannot think of any decision that they make every day that would not come under this jurisdiction or this language.

This language is so broad. It says "any employee." It did not say the majority of employees. It said "any employees," and "tend to cause." That language is written so broadly, so biased, so strong, I am really surprised. I think the authors got a little greedy in drafting the language and maybe got a little carried away. I do not know.

I think it is terrible language and certainly is not language that should become law of the land. I will predict it will not become law of the land maybe because they have asked too much. It goes a little bit further. Not only does it mandate that the Secretary impose the labor protection provisions but it also says the "proponents," or in this case we are talking about the companies, "other transactions shall bear the burden of proving that there will be no adverse employment consequences" or that the projected costs of "the imposition of such protection would be excessive."

What that means, Mr. President, is that the companies of the transactions

involved who have to bear the burden of proof that there will be no adverse employment consequences, and again we are talking about to any employee or that the projected cost or the imposition of the labor protection provisions would be excessive.

That is going to be very hard to figure because we turned it over to the Department of Labor to calculate the labor protection provisions.

Mr. President, I think this is a bad amendment. I think it was drafted poorly, and there are a lot of other substantial reasons to oppose this amendment. This amendment is a real violation of the collective-bargaining process, and a direct violation of the collective-bargaining process.

The Senator from Kentucky is well aware of the fact that many airline companies and their unions have negotiated labor protections. That is fine. I have no problem with that. I think it should be between the companies involved and their employees. That is certainly an issue that is a very legitimate issue. It is job security for companies and their employees to negotiate. As a matter of fact, most of the negotiations for the last 2 or 3 years have dealt more with job security than they have with wages and benefits. People are concerned about job security. And I know in the auto industry, in the steel industry, and other major industries, the airline industry, negotiations have centered around job security. Labor protection provisions are legitimate bargaining table items but what we are doing if we pass this amendment is saying we are not going to allow you to bargain this. We are going to have a Federal statute mandating, and we are going to have a Federal intervention in the collective bargaining process, all on the side, in this case, of the unions.

I would tell the majority leader that I would oppose it if it were on the side of management. I personally believe in the collective bargaining process. I do not think Congress should be interfering by taking one side or the other side.

In this case, this legislation is taking strictly the case of the union. It says employers, you have the burden of proof. And you have to pay for it. You have to approve it. It says if this adversely affects any employee, the Secretary shall impose labor protection provisions.

So, again, it is a real interference in the collective bargaining process.

How much time do I have?

The PRESIDING OFFICER. The Senator from Oklahoma has a little over 6 minutes remaining.

Mr. NICKLES. Thank you very much, Mr. President.

Mr. President, this amendment would come at a time when you have an airline industry that certainly has been changing. There have been mergers but the airline industry has been growing with a lot of changes, new hubs, new airports, new routes, and a lot of demand on the system.

I put in the RECORD yesterday an account of the growing demand. I was surprised at the number of miles, and the number of passengers. In 1978 we had 275 million passengers, and in 1986, we had 418 million passengers. The number of people who are flying today since deregulation has increased and increased substantially.

Employment growth, again in the airline industry, has grown substantially. In 1978 we had 329,000 employees in the industry, and in 1986 we had 421,000. That is an increase of about 50 percent in the last 7 or 8 years—a significant growth in employees, in passengers, in wages, and in benefits.

Wages for the average salary in 1978 was $28,000. The average salary in 1986 was $42,000. So it is a significant increase in cost.

But we should not be imposing this kind of a costly prohibition on the airline industry to confuse and make it very difficult for companies, in many cases companies that are going through some financial difficulties.

We have some big carriers that are in very difficult times. They may need a merger to be able to survive. They may well need a merger. This legislation could prohibit that merger.

Several of the mergers that have happened in the last couple of years, if they had labor protection provisions mandated, could not have gone forward, those companies would have gone bankrupt, and you would have had a loss of thousands of jobs.

I believe passage of this amendment will cost thousands of jobs. It will not save jobs. It will not protect labor. It will cost jobs. It will increase bankruptcies. It will be adding punitive regulations on an industry, part of which is struggling to survive today.

It will be costly to consumers. This legislation will be quite costly to consumers. Somebody has to pay the bill. For those airlines that are able, if they could still merge—and I do not know if any could still merge—somebody would have to pay the cost. These labor protection provisions in all likelihood, if they followed the precedent, would equal 60 percent of payroll for 5 years. We are talking about pilots in some cases that make $140,000 or $150,000 a year. So for 5 years you are talking about compensation of $400,000 or $500,000 for not flying an airplane.

We are talking about in some cases people who clean the airplanes who right now make $45,000, who would get 60 percent of that. So they would get $30,000 a year for 5 years for not cleaning or not doing anything.

We are talking about $150,000 for somebody who cleaned the airplane and they may well go get a job the next week. But yet they could still be entitled to receiving that kind of compensation.

Mr. President, if there was ever special interest legislation, this is it. This is it. We have a couple of groups who have been very active in lobbying the Congress saying "We want legislation, and we want labor protection provisions." We do not have it for the steel industry. We do not have it for the oil industry or the coal industry. We do not mandate it for the auto industry. We do not mandate labor protection provisions for any other industry, and all of those industries have gone through significant mergers in the last several years. It would be a real mistake for us to mandate it on the airline industry alone. It would be a mistake for us to mandate it on any industry. It is a real violation of the free enterprise system.

I would imagine that most Senators in this body have at various times made speeches and arguments on behalf and defense of the free enterprise system. This Senator has. This amendment is a direct contradiction of the free enterprise system. This is saying to airline companies and airline unions, we do not think you can do this well enough, so we are going to interject ourselves in your behalf. I think that is a real mistake. I believe it is a real violation of free market principles. It is not what the marketplace is about. Everybody has expressed concern about what is happening in Wall Street the last couple of weeks.

I know I have been concerned. I have heard the majority leader speak. He is concerned. I think we all are. This type of intrusion, this type of interference in one particular segment of that industry is the exact wrong signal we need to be sending. If we are going to pass it for this industry, why not pass it for the coal industry or the steel industry? Those industries would defeat it and they would fight it aggressively because they know it would be detrimental to their competitiveness and health. A lot of those companies are struggling to survive as well.

I believe it would be detrimental to the long-term interests of their employees.

So I hope that my colleagues would show what I think would be wisdom. We have voted down this amendment several times in the past. Again, it has been close. I think one vote was 49 to 49. They do not get much closer than that. I do not know what the vote will be today, but I hope we will follow what we did in the past and defeat the amendment.

Mr. ADAMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Nine and a half minutes.

Mr. ADAMS. I yield myself 5 minutes.

Mr. President, I want to answer the statement that was made as to people who are in support of this, and I think it is very well summarized in a letter from the president of American Airlines, who is certainly management, and who is one of the best operators in the business. It goes directly to the point of this bill. He says as follows:

Much of the current consumer dissatisfaction with airline service has resulted from the turmoil created by various mergers and acquisitions approved during the past two years. To a considerable extent, that dissatisfaction stems from the repressive labor practices of some carriers, most notably—but not exclusively—Texas Air. These practices, and their result, sully the reputation of our entire industry. For this reason, American is prepared to support legislation that will provide greater security for airline employees affected by mergers or acquisitions.

Mr. President, I ask unanimous consent that the entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN AIRLINES,
*August 3, 1987.*

HON. HOWARD METZENBAUM,
*U.S. Senate, Washington, DC.*

DEAR SENATOR METZENBAUM: I am writing to you in your capacity as a leader in the fight to secure statutory labor protective provisions for airline mergers and acquisitions.

For some time, the airline industry has opposed being singled out for special treatment in this respect, and American Airlines has supported the industry position. However, because of the grossly unfair practices of some airline employers, we have reconsidered our stance on this issue and agree that better protection for airline employees would be appropriate.

We hope that your Labor Subcommittee will consider a full range of remedies to improve the rights and working conditions of airline employees. In particular we urge you to investigate the practice of "double-breasting" and to investigate the carrier practice of eliminating the health and pension benefits of employees and retirees as a means of gaining competitive advantages.

Much of the current consumer dissatisfaction with airline service has resulted from the turmoil created by various mergers and acquisitions approved during the past two years. To a considerable extent, that dissatisfaction stems from the repressive labor practices of some carriers, most notably—but not exclusively—Texas Air. These practices, and their result, sully the reputation of our entire industry. For this reason, American is prepared to support legislation that will provide greater security for airline employees affected by mergers or acquisitions.

We would like to work with you on these and other issues so that air transportation can once again be the comfortable and reliable service that it used to be.

Sincerely,

R.L. CRANDALL.

Mr. ADAMS. Mr. President, I was Secretary of Transportation when this deregulation bill was passed in 1978, and a key ingredient of it was the labor protection provisions. They have been in the law for over 30 years. They are in the transportation industry across the board. They are in the railroad industry. They are in the airline industry. They were there for a particular reason, as I stated last night.

In the free enterprise system we have had this because transportation employees have special niches within their industry. It is not easily transferable. The transportation industry needs to have enough stability to see that this country moves and grows, because transportation is the key to other industries. It is the key to whether the steel industry grows, the oil industry, and all the others. Give me control of the transportation to an area, and I will take control of the industries in that area.

The airline industry in this country has turned subsidies upside down. The small cities in this country, the small- and medium-sized cities, are having their business that is the new growth industry in America sucked out of them—the service industries, financial industries, and others. Why? Because it costs more to go a short distance to a medium-sized city than it costs to go a long distance to a large city. You can fly for less from New York to Los Angeles than to many points in between. If you want to go south, you can fly on special fares for $99, and if you want to go to Jacksonville, which is 1,000 miles closer, it costs $279. So we are talking about real differences.

I want to talk briefly about what happened on some of these mergers and why this is being done. The Department of Transportation has never applied these, even though they were told to do it, and there was a 30-year history.

There are some good companies. You talk about collective bargaining and whether or not this is destructive or helpful to it, and I will show you how destructive the present system is.

The Republic flight attendants gave up $12 million in concessions in negotations to get LPP's in their agreement. When Republic was bought by Northwest Airlines, Northwest said, "We didn't negotiate these LPP's, so we don't have to abide by them." End of collective bargaining. End of stability in the industry. End of rights for those people who have had a long history of trying to make it work.

We carefully drafted this. As to the language that the Senator mentioned, about it being discretionary with the Secretary of Labor, that was deliberately done so that we did not apply the standards of Allegheny-Mohawk. I assured Senators in the committee that we would not apply automatically Allegheny-Mohawk, that it would be discretionary.

There is a cap on it that says that if the labor protection were to outweigh the value of the merger—everybody has to file value in these mergers and get through the SEC and convince the stockholders—then it would not be applied.

Talking about whether or not there might be a veto, I do not know. But the ranking members of the House committee handling this, which passed by voice vote in the House of Representatives—the Republican members have written to the President of the United States saying: "We need this legislation; we support it. We want to have it go through." I think it will go through. I do not think there will be any type of veto. I do not think we have any danger of anything happening other than fairness to the employees.

What we are trying to do here is take a ground from zero to cost of the merger and say that if you are going to do a merger or a merger acquisition, you do not dump the entire burden on the back of the employees who cannot defend themselves.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Oklahoma has 30 seconds.

Mr. NICKLES. Mr. President, the Senator has said that it applies only to transportation. Transportation used to be a regulated industry. It is a deregulated industry now. The airlines were deregulated.

We are not here to debate deregulation. We are here to debate whether or not we are going to mandate labor protection provisions on one industry. I think it would be a very serious mistake, very much an intrusion into the collective-bargaining process, and very much an intrusion into the free enterprise system as a whole.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Washington has 4 minutes.

Mr. ADAMS. I yield myself 1 minute.

Mr. President, this is not establishing something new. This is to continue what we have had in this country for over 30 years.

I have tried to indicate that we arrived at an accommodation in the committee, and it passed by 15 to 4.

Mr. President, I hope that my colleagues who are watching this debate and watched it last night will understand that this is very important. I hope this amendment will be agreed to. It is very important. It is a part of the consumer bill.

I yield to the Senator from Kentucky.

Mr. FORD. Mr. President, I yield such time to the majority leader as he needs.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER. Three minutes.

Mr. BYRD. Mr. President, I have discussed the unanimous-consent request with the distinguished Senator from Oklahoma [Mr. NICKLES], and I do not particularly want to offer an amendment to amendment No. 1106. I can. But I ask unanimous consent that no further amendments to amendment 1106 be in order.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, we have no objection.

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two minutes and 20 seconds.

## SENATOR BREAUX PRESIDES FOR 100 HOURS

Mr. BYRD. Mr. President, at 9:22 this morning, which was just 5 minutes ago, the Presiding Officer, the very able and distinguished Senator from Louisiana [Mr. BREAUX], had presided over the Senate for a total of 100 hours during this session. Therefore, Senator BREAUX becomes the first Senator to achieve this significant landmark in the 100th Congress.

The duties of presiding over the Senate fall to the majority party. Within the majority party, these duties fall most heavily upon the most junior Members. While the hours in the chair may not easily fit into a Senator's demanding schedule, it is an excellent opportunity for Senators to become familiar—only somewhat familiar—with the Rules of the Senate.

In this regard, Senator BREAUX has been an especially willing and able Presiding Officer. He has developed a presiding style that is fair and efficient, and he has always displayed careful attention to his responsibilities. He is alert, and he speaks much more rapidly than I do, which is good for a Presiding Officer. It does not take him 5 minutes to say 10 seconds' worth of words. That is where he would excel me quickly. I admire that in a Presiding Officer.

He is decisive; he is fair. His quest for the 100-hour presiding landmark began on January 14. The seriousness of his desire to do more than his share of the presiding duties was displayed when he presided for 3 hours and 31 minutes on Saturday, September 26. He was the only Presiding Officer during that session.

While I am pleased to be able to congratulate this able Presiding Officer, I hope that reaching this outstanding 100-hour landmark will not dampen his willingness to preside during the remaining days of the 1st session of the 100th Congress. Additionally, I look forward to congratulating him in the future for the completion of another 100 hours in the chair during the second session of this Congress.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The majority leader's time has expired. [Laughter.]

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 15 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. The Golden Gavel Award began in the mid-1960's. The idea originated with Senator Mike Mansfield and Frank Valeo, the Secretary of the Senate. It is presented by the pages. It recognizes Senators who have presided 100 hours in a single session of Congress. It is not really made of gold.

A ceremony is held, which is attended by the floor leaders and the President pro tempore, and I look forward to it.

The PRESIDING OFFICER. The Chair acknowledges and thanks the majority leader.

## AIR PASSENGER PROTECTION ACT

The Senate continued with consideration of the bill (S. 1485).

AIR PASSENGER PROTECTION ACT OF 1987

Mr. BYRD. Mr. President, I support the adoption of the Air Passenger Protection Act of 1987. Since the deregulation of the airline industry, the incidences of delayed flights, canceled flights, lost baggage, overbooking, and deteriorating customer service have continued to increase. Further, while the quality of service has declined, the cost of air travel in many States, such as West Virginia, has continued to increase. Any one who flies has experienced some of these difficulties—they are not uncommon occurrences.

I have heard from several of my constituents in protest against the service they receive. One constituent writes:

> There was a time when one could plan business or pleasure trips, using U.S. airlines, and usually expected to arrive on schedule. Now, I am offering bets to any person using U.S. airlines, and give 2:1 odds, they will not arrive on time. That is the status of unregulated airlines.
>
> In the last 5 weeks, I have traveled from Washington, DC, and returned to Columbus, OH; Omaha, NE; Spokane, WA; and Elmira, NY. One of the involved flights arrived on time, four were cancelled, and the rest arrived 30 minutes to 3 hours late • • • Congress gave—a long deregulation rope, and with it they are strangling the customer.

Another constituent writes that he was scheduled to fly from St. Louis, MO, to Pittsburgh, PA. And I quote:

> We were told that the flight would depart about 30 minutes late because of a repair being done on the auxiliary power motor. There was no air conditioning even though the outside temperature was in the high 80's. After 2 hours of sitting in the aircraft, they finally hooked up to terminal power so that the air conditioning could be turned back on. One of the passengers had to be removed from the plane by paramedics.
>
> After 2 hours of sitting on the ground, the stewardess casually told us that another plane would be going to Pittsburgh, and we could check about changing flights, but there was probably no way the luggage would be changed to another plane because that flight was still scheduled to take off as soon as the repairs were made. I went back to the gate desk, only to be told that the flight had been cancelled more than an hour before, and no one had notified those of us remaining on the plane.
>
> If this had been an isolated incident, I would have probably not been forced to write this complaint, but 1 week before—we were told that the plane had a power cable problem. After passengers had waited over 2 hours, we were advised that another plane would take us to our destination.

Clearly, something must be done to protect the flying public. Deregulation has meant decreased quality, decreased service, and increased costs. This "cattlecar" approach to air travel is intolerable. This bill attempts to address these problems, and hold the airlines responsible to deliver the service for which we pay, and I urge the adoption of the bill.

The PRESIDING OFFICER. All time has expired.

The question now occurs on the adoption of the substitute amendment.

Mr. FORD. A point of information, Mr. President. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. FORD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Adams substitute amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Utah [Mr. HATCH], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Vermont [Mr. STAFFORD] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

I further announce that, if present and voting, the Senator from Idaho [Mr. SYMMS] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 64, nays 28, as follows:

[Rollcall Vote No. 360 Leg.]

YEAS—64

| | | |
|---|---|---|
| Adams | Exon | Moynihan |
| Baucus | Ford | Nunn |
| Bentsen | Fowler | Packwood |
| Biden | Glenn | Pell |
| Bingaman | Graham | Pressler |
| Boren | Harkin | Proxmire |
| Boschwitz | Hatfield | Pryor |
| Breaux | Heflin | Reid |
| Bumpers | Hollings | Riegle |
| Burdick | Inouye | Rockefeller |
| Byrd | Johnston | Sanford |
| Chiles | Kennedy | Sarbanes |
| Conrad | Kerry | Sasser |
| Cranston | Lautenberg | Shelby |
| D'Amato | Leahy | Specter |
| Danforth | Levin | Stevens |
| Daschle | Matsunaga | Trible |
| DeConcini | McCain | Warner |
| Dixon | Melcher | Weicker |
| Dodd | Metzenbaum | Wirth |
| Durenberger | Mikulski | |
| Evans | Mitchell | |

NAYS—28

| | | |
|---|---|---|
| Armstrong | Helms | Quayle |
| Chafee | Humphrey | Roth |
| Cochran | Karnes | Rudman |
| Cohen | Kassebaum | Simpson |
| Dole | Kasten | Stennis |
| Domenici | Lugar | Thurmond |
| Garn | McClure | Wallop |
| Gramm | McConnell | Wilson |
| Grassley | Murkowski | |
| Hecht | Nickles | |

NOT VOTING—8

| | | |
|---|---|---|
| Bond | Hatch | Stafford |
| Bradley | Heinz | Symms |
| Gore | Simon | |

So the amendment (No. 1107) was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. WIRTH). The vote now occurs on the first-degree amendment, as amended. The yeas and nays have been ordered.

Mr. FORD. Mr. President, is there any need to have a rollcall vote? Might we vitiate the order and just have a voice vote?

Mr. President, I ask unanimous consent that the order for the yeas and nays be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment, as amended.

The amendment (No. 1106), as amended, was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. ADAMS. Mr. President, I move to lay that motion.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, for the information of my colleagues, we are making significant progress on this bill. It appears that at least one of the major amendments will not be offered. That was the amendment to take the airport and airways trust fund off-budget, on which there would be a point of order by the Budget Committee.

We do have at least three other amendments. I would be very hopeful we might be able to work out agreements on them. One is by Senator METZENBAUM and two are by Senator LAUTENBERG.

There may be one other amendment that we are trying to discuss at the moment. There may be an amendment that will be offered and then withdrawn, an amendment by the distinguished Senator from Nebraska [Mr. EXON].

We are moving in the direction of finishing this, hopefully, by noon, unless we get into some controversial amendments which are now on the horizon.

It appears that there are several out there under the surface, and the water is beginning to bubble, so it could go beyond that.

I hope we can move expeditiously. I have no amendments to offer at this time.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I ask unanimous consent that Senator D'AMATO be added as a cosponsor to my amendment No. 1107.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Mr. President, I will not offer my amendment, which would put the aviation trust funds off-budget.

Mr. STENNIS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mrs. KASSEBAUM. Mr. President, this is just not the right time to bring that amendment before the Senate. But I do believe it is an important issue for those of us who have struggled to get full funding for the aviation trust funds. We have been continuously disappointed that in many ways it has been held hostage to budget considerations. I would hope that at the beginning of the new year we can seriously review the importance of the trust funds and the ability to move them off budget and still have them part of the process.

I think the opportunity will exist. I know we will consider holding further hearings on a manner in which to meet this particular issue.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, the Senator from Ohio was about to offer an amendment which I believe is vitally important to the safety and security of planes flying through the air and passengers on those planes. It is an amendment that would ban the sale, importation, transfer or usage of plastic guns.

Plastic guns cannot be detected by the devices that are presently used at airports, and so a terrorist, or for that matter someone who was not a terrorist but who had other equally vicious designs, could go through the detector and it would never be noticed.

The Senator from Ohio was prepared to offer that amendment, but I have been advised by some Members on the other side that if I were to offer the amendment, which I might say is also pending in the Judiciary Committee as a bill, there would be extended debate at this point.

I might say that if I were to offer it, I have been advised that Senators THURMOND, and KASSEBAUM and others would be prepared to support that amendment. But I wonder whether someone who has some strong feelings on this subject would be good enough to indicate whether he feels that offering the amendment at this point would delay this bill for a rather lengthy period of time.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. METZENBAUM. I do, indeed.

Mr. McCLURE. Mr. President, obviously there are many of us who feel very strongly on that issue and without joining the issue and all its ramifications at this time, let me simply suggest that, indeed, there is a fundamental concern about the rights guaranteed under the second amendment of the Constitution of the United States and that right is very jealously guarded by many of us.

The issue of the detection of devices that might be used by terrorists is much broader than that of simply plastic guns or, indeed, certainly that of fire arms generally. And many of us want to move very strongly against such actions by terrorists or threatened actions by those who would by acts of civil violence destroy the lives or freedoms of other individuals.

But again without going into all of the arguments why we would oppose such an amendment, I think it is fair to summarize by saying that many of us do not believe the way to protect the rights of some Americans is to deprive all Americans of fundamental rights which we believe would be the case in such legislation, and therefore

I think the Senator is very, very wise to note and I think has been well advised to understand that, indeed, such an amendment would cause some extensive discussion on the floor of the Senate.

Mr. METZENBAUM. Would the Senator from Idaho perhaps modify his views and perhaps permit us to go to a vote at an early time if he were aware of the fact that the overwhelming majority of police organizations in this country support the amendment; the Bureau of Alcohol, Tobacco and Firearms supports the amendment; and the Secret Service protecting the President supports the amendment?

I thought that might persuade the Senator from Idaho to join up with all those wonderful people.

Mr. McCLURE. Will the Senator yield?

Mr. METZENBAUM. Surely.

Mr. McCLURE. The Senator is going to push an "on" button here with respect to whether or not the statement made by the Senator is accurate, which I resist. I know that some police officers are in favor of the amendment. Many are not. I think the Senator is getting into the area which will provoke the debate rather than avoid the debate.

Mrs. KASSEBAUM. Will the Senator yield?

Mr. WALLOP. Will the Senator yield further?

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. METZENBAUM. I release the floor. I yield.

Mr. WALLOP. Mr. President, I would just say to the Senator from Ohio, my friend, Mr. METZENBAUM, lest he think that the opposition to this would be confined but to one or two Senators, I think it is much broader than that. I have no idea whether in the long run it would win or lose, but it would take the long run to discover that.

Mrs. KASSEBAUM. Mr. President, I was merely going to add to the list of supporters. And I know this would require a lengthy debate in support of it, but I think it has some merit on this legislation. It is strongly supported by the airlines.

AMENDMENT NO. 1108

Mr. METZENBAUM. Mr. President, I send an amendment to the desk on behalf of myself, Senator THURMOND, Senator KASSEBAUM, and additional Senators.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] for himself, Mr. THURMOND, and Mrs. KASSEBAUM proposes an amendment numbered 1108.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SECTION 1(a).—PROHIBITION OF HARD-TO-DETECT FIREARMS.—Section 922 of title 18, United States Code, is amended by adding at the end thereof a new subsection (p) as follows:

"(p)(1) It shall be unlawful for any person to manufacture, import, sell, possess, transfer, receive, ship, or deliver any firearm that the Secretary determines, after consultation with the administrator of the Federal Aviation Administration.

"(A) is not as detectable as the Minimum Security Standard Exemplar, after removal of grips, stocks, and magazines, by walk-through metal detectors approved by the Federal Aviation Administration for use at airports in the United States; or

"(B) is not identifiable as a firearm or readily detectable by cabinet X-ray systems, as defined in regulations prescribed by the Food and Drug Administration (21 C.F.R. 1020.40(b)(3)) designed for inspection of carry-on baggage; *Provided*, however, nothing in this section shall be construed as requiring that the Federal Aviation Administration utilize the Minimum Security Standard Exemplar as a Federal Aviation Administration detection standard.

"(2) As used in this section—

"(A) the term 'firearm' does not include a firearm described in subsection 921(a)(3)(B) of this title; and

"(B) the term 'Minimum Security Standard Exemplar' means a firearm substitute that resembles a North American Arms .22 caliber rim fire weapons, is 4½ inches in length, 2 inches in height, is made of material type 17-4 PH stainless steel or 1040 mild steel, and weighs 8½ ounces."

(b) Section 925 of title 18, United States Code, is amended by adding at the end thereof a new subsection (f) as follows:

"(f)(1) The Secretary shall not authorize, under subsection (d) of this section, the importation or bringing in of any firearm that—

"(A) is not as detectable as the Minimum Security Standard Exemplar, after removal of grips, stocks, and magazines, by walk-through metal detectors approved by the Federal Aviation Administration for use at airports in the United States; or

"(B) is not identifiable as a firearm, or readily detectable by cabinet x-ray systems, as defined in regulations prescribed by the Food and Drug Administration (21 C.F.R. 1040.20(b)(3)) designed for inspection of carry-on baggage.

"(2) As used in this section, the terms 'firearm' and 'Minimum Security Standard Exemplar' have the meanings given those terms in section 922(p) of this title.".

(c) The first sentence of section 925(d) of title 18, United States Code, is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subsection (f) of this section, the Secretary".

(d) The Administrator of the Federal Aviation Administration shall conduct such research and development as may be necessary to improve the effectiveness of airport security metal detectors and airport security x-ray systems with respect to detection of firearms prohibited by section 922(p) of title 18, United States Code.

(e) When appropriate because of changed technology, the Secretary of the Treasury shall submit to the Congress proposed legislation (including technical and conforming provisions) to amend the definition of the term "Minimum Security Standard Exemplar" contained in the amendments made by this Act.

(f) Except as provided in subsection (g), the amendments made by this section shall take effect upon the enactment of this Act.

(g) It shall be a bar to prosecution for an offense involving the possession or receipt of a firearm in violation of subsection (p) of section 922 that the defendant first possessed or received the firearm before the date of enactment.

Mr. METZENBAUM. Mr. President, in view of the fact that this amendment would unquestionably tie up the bill, the Senator from Ohio asks unanimous consent that the amendment remain as offered as a part of the record but beyond that I would withdraw the amendment as pertains to any action in connection therewith.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. FORD. I thank the Senator from Ohio for not tying the bill up any further.

Mr. President, we have two amendments by the distinguished Senator from New Jersey, Mr. LAUTENBERG. Both of the amendments, one on airline advertising and one on direct frequent flier programs, have been cleared on both sides and I would like to proceed with those two amendments now so that we might complete action on the bill.

AMENDMENT NO. 1109

(Purpose: To ensure fairness in frequent flier programs)

Mr. LAUTENBERG. Mr. President, I thank the manager and I will be very quick since the amendments have been cleared. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1109.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, after line 23, insert the following new paragraph:

"(5) to prevent any carrier from changing the rules or requirements of a frequent flier program to the general detriment of the participants in such program without reasonable notice, or, to prevent a participant in such program from utilizing, during a reasonable period of time after a change in the rules or requirements of such program has become effective, credits accumulated

by the participant under the rules or requirements as in effect before such change."

Mr. LAUTENBERG. Mr. President, this amendment would help ensure some basic consumer rights. It would protect consumers from unfair, detrimental changes in frequent flier programs without fair notice.

For several years now, airlines have been offering frequent flier programs. These programs are an inducement to travelers to use a specific carrier. There are tremendous benefits for the traveler. By flying a certain number of miles with a carrier, the traveler is rewarded with a free flight, or some other service.

Mr. President, when a traveler signs up for a frequent flier program, he or she does so to get the benefits. But there may also be inconveniences. In order to get the promised prize, he or she may revise a schedule, taking a less convenient, or more expensive, flight than one that may be available on another carrier.

When travelers sign up for a frequent flier program, they make a contract with the carrier. And they have the right to expect that the terms of that contract will be adhered to.

Early this year, we heard of numerous instances where that bargain was not being honored. There was a man who had, time after time, arranged his schedule in order to compile frequent flier points. He was approaching a goal. When he reached it, he would be rewarded with free round-trip tickets to Europe. That goal was within his grasp, and he was making plans for the vacation of his life. But then, without warning, the rules of the game were changed. His goal was no longer close at hand, but far away. It was as if he had almost reached the goal line, and then was told that the field was being made 50 yards longer.

This amendment would protect consumers from unfair rule changes in the middle of the game.

Mr. President, as we have heard, the amendment has been cleared with the managers of the bill and is acceptable to them. I ask adoption of the amendment.

The PRESIDING OFFICER. Is there further discussion of the amendment?

Mr. FORD. Mr. President, as I stated earlier, this amendment is accepted on this side and we ask its approval.

Mrs. KASSEBAUM. Mr. President, the amendment has been cleared on this side of the aisle as well.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey [Mr. LAUTENBERG].

The amendment (No. 1109) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1110

(Purpose: To increase airline ad disclosure)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1110.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, strike lines 22 to 23, and insert in lieu thereof the following:

"Transportation a notice of the minimum percentage of seats on such transportation available at the advertised fare."

Mr. President, this is a very simple, straightforward amendment. Its intent is to expand and clarify a provision included by the Commerce Committee in S. 1485.

The subject is airline advertising. We all know the problems. We have all heard the complaints from our constituents. The complaints about advertised special fares that do not seem to exist.

Section 422 of S. 1485 would require airlines to notify consumers of limited availability of seats when advertising special fares. This amendment would simply expand that amendment, to give the consumer a fair shake. It would require that airlines disclose the minimum percentage of seats available at an advertised special fare.

Mr. President, the airline industry is a complicated one. The sale and pricing of tickets is a complicated process. The exact number of seats offered at any one fare can vary from flight to flight. This amendment would not take away the flexibility airlines need to provide the consumer with the benefits of discount fares. It would not set a ceiling on discount fares. It would only provide a floor.

Consumers have a right to know if a fare they see advertised is really available, and if they have a chance of getting it. If the advertisement says, for instance, that as few as 10 percent of the seats on a flight may be available at the special fare, consumers would be forewarned. If they do not call right away, they knowingly run the risk of not getting the fare.

Mr. President, that is only fair.

Mr. President, I believe the amendment has been cleared with the managers of the bill, and is acceptable to them. I ask for its adoption.

Mr. President, I ask unanimous consent a letter from ACAP, the Aviation Consumers Action Project, be included in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AVIATION CONSUMER ACTION PROJECT,
WASHINGTON, DC, OCTOBER 28, 1987.

Hon. FRANK R. LAUTENBERG,
*Chairman, Senate Subcommittee on Transportation and Related Agencies, Senate Appropriations Committee, Washington DC.*

DEAR MR. CHAIRMAN: ACAP has been a strong advocate for a legislative solution to the many problems facing airline passengers today. We are pleased to see that S. 1485, the Air Passenger Protection Act of 1987 addresses many important consumer issues.

I am writing to express support for the two amendments that you will propose to that bill. These provisions will give frequent flyer program participants a reasonable amount of time to use their earned mileage credits as the airline promised them they could. Also, carriers advertising discount fares will be required to include in such ads the minimum percentage of seats available at the advertised fare.

Early this year, ACAP petitioned the Department of Transportation to issue a rule specifying how many seats an airline must make available at an advertised rate in order to avoid paying penalties for false or deceptive advertising. However, DOT failed to act on this bait-and-switch problem. Therefore, your amendment is necessary to provide passengers with adequate notice about the likelihood of obtaining a fare at the advertised price. It recognizes that if an airline wants to promote a fare on the basis of its price, travellers should have a realistic opportunity to obtain that fare if they act diligently.

As to your other proposal, frequent flyer programs have become increasingly important in deregulated airline competition since their introduction in 1980. Millions of passengers limit their choice of carrier and flights in reliance upon earning enough mileage credits promised by a particular carrier to obtain a specific trip. These passengers feel cheated when carriers increase the mileage credits required for certain trips without giving them a fair chance to use their credits as they originally had been promised.

We are convinced that your proposed amendments will greatly enhance the important protections that S. 1485 provides to airline passengers. As the only nonprofit consumer group working full-time on aviation issues, we thank you for your initiative in proposing these much needed consumer protection provisions and look forward to working with you in the future.

Sincerely yours,

CHRISTOPHER J. WITKOWSKI,
*Executive Director.*

Mr. DANFORTH. Mr. President, I have some concerns about the potential impact of this amendment on consumers, and before we reach a decision on this amendment I would like some clarification of the result the amendment is intended to produce. Is it intended to limit the airlines' ability to

make changes in their fares or to prohibit them from changing over a period of time the number of seats on a given flight which are available at a discount fare?

Mr. LAUTENBERG. Mr. President, the amendment is intended to impose only one kind of limitation on airline pricing policies. If an airline represents in its advertising that a certain percentage of seats on a flight will be sold at a particular discount price, the airline can't make a lower percentage of seats available. The amendment would not preclude the airline from offering a greater number of discount seats.

Mr. DANFORTH. Mr. President, I appreciate the Senator's comment. I would also like to inquire whether the word "available," as used in the amendment, refers to the number of seats actually left for sale at a given point in time, or whether it refers to the number of seats the airline intends to offer for sale at the discount price before any of the seats have been sold?

Mr. LAUTENBERG. Mr. President, the term available refers to the number of discount seats before any flights have been sold.

Mr. DANFORTH. Mr. President, I thank the Senator for his clarification and I have no objection to the amendment.

Mr. LAUTENBERG. Mr. President, again, the amendment has been cleared with the managers of the bill, and is acceptable to them. I ask for its adoption.

Mr. FORD. Mr. President, the Senator from New Jersey is absolutely correct. It meets with the approval on this side. We have no objection to it.

Mrs. KASSEBAUM. Mr. President, I think it is an excellent amendment. There is no objection on this side of the aisle.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey [Mr. LAUTENBERG].

The amendment (No. 110) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Mr. President, I thank the managers of the bill for their cooperation.

Mr. FORD. We thank the distinguished Senator from New Jersey for his cooperation.

Mr. President, we are getting very close to the final amendment or two and to final passage. There will be a vote on final passage. So I will alert my colleagues to that.

First, let me compliment Senator KASSEBAUM on the tremendous job that she has done and is continuing to do on the Aviation Subcommittee. She had an amendment today that she has decided not to propose, one which I support wholeheartedly, and that is taking the trust fund off budget, prohibiting the use of that trust fund for items other than aviation safety and development. As we find now, the administration, particularly OMB, is refusing to let us spend the money that the air-traveling public is paying for through an 8-percent ticket tax. They then use that money to attempt to hold down the deficit. What we are doing is denying those people who are paying into the trust fund the opportunity to know that we are spending that money for their safety, and it is regrettable to me that it is not being spent.

I pledge to my colleague from Kansas that we will continue to look at this particular issue in the committee and that I will work diligently to see if we cannot accomplish what her amendment would have accomplished today had it been offered and passed.

One other item, Mr. President, and I think it dovetails or fits into the off-budget as it relates to the airport improvement trust fund, and that is an independent FAA. I find that by the time you have a good idea and put forth that idea, by the time it goes through all the webs that are there in the department, it is changed, diluted. Every bureaucrat would have to put a little dotted "i" or cross a "t." And ultimately two things happen: One is to dilute it to the point where it is ineffective, and, two, the time delay even makes it worse. So I think we must now consider, as we move from this legislation to others, the matter of working to improve the air transportation system as it pertains to the safety and efficiency.

So if we can bring those two items to the Congress and they are passed, I think we will have accomplished what is necessary with one additional item, and that would be oversight. We need to look very closely and to guard our turf gingerly so that we will be carrying out the mandate to the Congress as it relates to this trust fund.

I yield.

Mrs. KASSEBAUM. Mr. President, I would like to say I have pressured the chairman of the Aviation Subcommittee's support on the off-budget amendment, and all other aviation issues. He has provided an extraordinary leadership and he has just completed two aviation bills on the floor this week. And I am particularly pleased that we can review further the off-budget provisions which I think just as a concept regarding trust fund, whether it is aviation or the highway trust fund, Social Security trust fund, already by will be moving off budget. I think the whole concept needs to be reviewed in light of our budgetary concerns, and certainly regarding aviation and the importance of using the users fees, as the Senator from Kentucky pointed out, for the very purpose that they have been imposed.

Mr. FORD. I thank the distinguished Senator for her kind words and promise for hard work which she has always done.

I think we will see if we cannot help the staff move forward with the amendment that is now about the only one left before final passage.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## UNANIMOUS-CONSENT AGREEMENT—SENATE JOINT RESOLUTION 209

Mr. BYRD. Mr. President, last evening the Senate entered a time agreement on the House joint resolution, (H.J. Res. 393) as to the FHA temporary extension. I asked unanimous consent that that same time agreement also apply to Senate Joint Resolution 209, Calendar Order No. 394, which I understand is a companion measure.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AIR PASSENGER PROTECTION ACT

The Senate continued with consideration of the bill (S. 1485).

AMENDMENT NO. 1111

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1111.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 15, add the following immediately after the period: "Such summary information shall be displayed to the public in a clear, concise, and visible manner at all public airports.".

At the end of the bill, add the following:

SEC. . (a) The Secretary of Transportation shall, within 90 days following the date of enactment of this Act, take such action as may be necessary to require each such commercial air carrier to disclose to each passenger or his or her agent, at the time of reserving or purchasing a ticket for a flight the fact that a restroom will not be available on such flight, and to disclose, upon request a description of the aircraft on which such passenger will be flying.

SEC. . (b) The Secretary of Transportation, within 90 days following the date of enactment of this Act, shall, by regulation, prohibit any air carrier from cancelling, on the basis of any economic reason, any flight unless such air carrier—

(1) made a reasonable effort to notify each passenger of such cancellation at least 24 hours prior to the scheduled departure time for such flight; and

(2) makes available to each such passenger similar services within a reasonable time as determined by the Secretary of Transportation by regulation.

(3) For purposes of this section, the term "economic reason" does not refer to the cancellation of a flight in order to use the equipment assigned to that flight to replace other equipment, the timely departure of which has been prevented due to mechanical failure or other factors related to safety.

Mr. METZENBAUM. Mr. President, I am pleased to see the Senate moving forward on a bill to help airline passengers. I want to commend Senators FORD, HOLLINGS, KASSEBAUM, DANFORTH, and other members of the Commerce Committee for their efforts. I am pleased to be a cosponsor of S. 1485.

Air passengers need all the help they can get these days.

Long delays, cancellations, missed connections, and lost baggage rule the day.

Service today is dreadful.

The 1978 Deregulation Act was intended to encourage competition.

Instead, 9 years later, the airline industry is more concentrated than ever; 9 airlines control 94 percent of the market.

Routes have been abandoned. Fares manipulated.

And passengers treated with indifference.

Since the President fired 11,000 seasoned air traffic controllers in 1981, the air traffic control system has been overburdened and understaffed.

And, until recently, DOT and the FAA have taken a hands-off approach to all this confusion and chaos.

Enough is enough.

This legislation will help make the unfriendly skies more friendly.

It has some very good provisions. I am particularly pleased with the disclosure provisions. Consumers should know whether they have a better chance of arriving on time if they take a flight on American Airlines, Delta, United—or some other airline. The same is true about luggage. Which airline does the better job in ensuring that luggage arrives on time and at the same destination as the passengers?

This is important information to know. This bill will ensure the availability of such information. I believe it will inject some healthy competition into the airline industry.

I believe its a good thing too that consumers will have a place to call—24 hours a day—if they have a problem with an airline. That is also in this bill.

The amendment I am offering today builds upon this framework. The language I am offering is contained in my own air passenger consumer rights bill which I introduced in March.

My amendment will improve upon the on-time performance and luggage handling disclosure provisions of S. 1485. It will require that such information be made public at every airport each month.

It would require the Secretary of Transportation to prohibit the abrupt cancellation of flights for purely economic reasons unless airlines attempt to notify passengers about cancellations at least 24 hours in advance and provide passengers similar service within a reasonable time.

This provision would not apply to situations where an air carrier cancels a flight because of bad weather or some other safety-related problem. It only applies when carriers scratch flights simply because they can't fill up the seats on a plane.

Finally, my amendment would also require airlines to notify passengers, upon request, about the types of planes on which they will be flying. It will also require airlines to tell passengers when restrooms will not be available on a particular flight.

I urge adoption of this amendment and look forward to the prompt passage of S. 1485. I believe this legislation will go a long way in spurring the airlines to provide better service for their customers.

Mr. President, it is my understanding that the amendment is acceptable to both sides. This amendment, I think, makes a good bill that much better.

The PRESIDING OFFICER. Is there further discussion of the amendment?

Mr. FORD. Mr. President, the distinguished Senator from Ohio is absolutely correct. Now that we have worked on the amendment and have the language such that there are no objections on our side, we urge the adoption of this amendment.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, Senator DANFORTH and his staff spent a lot of time trying to work agreeable language on all sides. I think that language is now satisfactory and there is no objection on this side.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 1111) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there any further amendments?

Mr. FORD. Mr. President, the Senator from Nebraska, Mr. EXON, is on his way. He will take about 5 minutes and as soon as he arrives I hope the Chair can recognize him. Then we are prepared to go to third reading and final passage.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MIKULSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EXON. Madam President, I ask the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1112

(Purpose: To provide a method of redeeming the value of tickets issued by air carriers who are under chapter 11 of title 11, United States Code)

Mr. EXON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. EXON] proposes an amendment numbered 1112.

Mr. EXON. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 17, strike out "; and" and insert in lieu thereof a semicolon.

On page 5, line 23, strike out the period and insert in lieu thereof a semicolon and the word "and".

On page 5, between lines 23 and 24, insert the following:

"(5) to establish a system to ensure that any passenger holding an unused ticket on any air carrier which has filed a petition under chapter 11 of title 11, United States Code, and which has ceased service, is pro-

vided air transportation on another air carrier, on a standby basis, at its regular coach fare with the passenger entitled to redeem with the replacement air carrier the unused ticket purchased from the air carrier which ceased service as a credit against the fare charged by such replacement air carrier."

Mr. EXON. Madam President, I am pleased to offer an amendment to the Air Passenger Protection Act of 1987 which will assist passengers holding advance purchase tickets on airlines which have filed for bankruptcy and ceased operation.

In such situations, the passenger, or should I say the would-be passenger, having purchased an airline ticket in good faith, suddenly finds himself or herself holding merely a claim in a bankruptcy proceeding. The problem is this person needs transportation and also some measure of fair play as an individual consumer. Since the 1978 Airline Deregulation Act, competition has driven a number of airlines from the market into bankruptcy, leaving passengers in the situation I have just described.

There have been a number of proposals advanced in Congress to address this problem. The airlines have raised a number of legitimate objections to them in light of the present highly-competitive environment in the industry. It is my intent to try to find some type of middle ground that respects the needs of the individual airline passenger as well as the legitimate concerns of the airlines.

My amendment would provide that an airline ticket holder of a bankrupt airline be provided transportation by another airline on a stand-by basis. However, the replacement airline should not be expected to have to bear the full amount of the loss any more than the passenger. As a middle ground and distinction from most past proposals, my legislation allows the replacement airline to charge its regular coach fare, but also allows the passenger to offset that price with his original ticket. Thus, a passenger who originally had purchased a supersaver ticket would not lose his original investment, but on the other hand could not force a second airline to fly him at the low price and bear the entire burden of the loss.

The practical result of my amendment will be that, when an airline goes bankrupt leaving ticketholders high and dry, the loss will be shared partially by passengers and partially by the industry. Currently, all loss is on the passengers and other proposals have shifted the loss entirely to the airlines. Because my proposal is a middle ground, it may not be supported strongly by those who may wish to have the risk of loss totally one way or another. However, I also believe that by spreading around the risk of loss, it also makes this proposal inherently fair.

Madam President, as all know, the House of Representatives has already passed legislation in this area that would simply say if an airline goes bankrupt or is in default, other airlines on a stand-by basis must pick up the total cost of transporting the passengers. So that all will understand this, I want to give one brief example.

Let us suppose that a ticket purchaser buys a $100 ticket from point A to point B. But before he has a chance to exercise that option, the airline goes bankrupt. Then he goes to another airline that travels in that area and, if that other airline, for example, has a $200 rate from point A to point B, the ticket holder would pay $100, the total price being $200. He would get a credit of $100 and then he, the ticket holder, would lose $100, which is a shared burden.

I think this is a reasonable proposal. It is on a standby basis, meaning that it would not cost that new airline anything at all because, otherwise, the seat that would be awarded to the unlucky ticket holder would be an empty seat in any event when that plane took off.

It seems reasonable. I think it would be reasonable. And I would appreciate the comments of the managers of the bill as to whether or not they think a proposal such as this could be accepted by the two managers?

The PRESIDING OFFICER. The Senator from Kentucky, the manager.

Mr. FORD. The distinguished Senator from Kansas has put his finger on a real problem.

Mr. EXON. Nebraska?

Mr. FORD. Did I make a mistake?

Mr. EXON. We are the football State. They are the basketball State.

Mr. FORD. Well, it is obvious that you know very little about basketball but we will give you credit for football.

The distinguished Senator from Nebraska, who has a major football team—one of the major football teams, let me say to my good friend that I wish I could accept his amendment today. there are a lot of problems, as you know well, in this arena. It is very difficult for us to find a position that would not financially damage an airline that is economically sound and yet would not allow a passenger, or prospective passenger, to lose an investment.

You can have a layaway, as a lot of people have now, for Christmas in a department store that goes defunct and you would not get your money back. You would not get your package back, unless you filed suit and it became a class action. You would be able to get whatever might be left. Or you buy a major appliance and need to get it repaired. If the warranty is good but they are no longer in business, who do you go to to make that good?

I would say to my good friend that it is difficult for me to say to an airline that has made good economic judgments in the time period within the airline industry, that has not been the best of all worlds, to say that he has to pick up passengers because of the bad management of another airliner.

I will pledge to my friend today that we will continue to look at this. I hope he will be amenable to that. We will have hearings and we will work on this in conference. If it does not work there, we will continue to pursue this until we find something that I think will be fair.

This is not an amendment that does not have some controversy surrounding it. This is Friday. It is a quarter after 11. The Senator from Nebraska, I am sure, wants to leave here early so he can go see his football team tomorrow. I hope he will withdraw his amendment and give us an opportunity to work on it together. Hopefully we come up with something in a short period of time that would be satisfactory to the distinguished Senator.

Mrs. KASSEBAUM. Madam President, if I may just address a question to the Senator from Nebraska, I think he raises an issue that has caused a lot of concern with the traveling public, and there are passengers on an airline who question what might happen if such an incident as he has referred to might occur.

Has there not been a question of constitutionality raised regarding the Government's efforts to propose this kind of settlement?

Mr. EXON. I would respond to my friend and colleague from Kansas that I would suspect a constitutional question has been raised on that. There is hardly anything that we do here on the Senate floor where a constitutional issue is not raised. I am simply saying this is supposed to be a consumer protection bill. This is supposed to provide a measure of protection for consumers on airlines. I am not a lawyer and do not have an opinion, nor have I studied it as a nonlawyer, as to whether or not it is constitutional.

I would certainly think there are plenty of rules, regulations, and laws which have been passed regarding all kinds of businesses that require licenses to operate, where they have to meet some minimum standard. I do not suspect that the courts would so determine.

But then, as the Senator from Kansas knows, we do not have a full Supreme Court at the present time, so it could split right down the middle.

I would simply say I think this is a very important issue. I will be one of the conferees with the House on this. The House has a measure that loads all of this on the unsuspecting airline. I am not unmindful of the points which have been made by the Senator

from Kentucky and the Senator from Kansas, as I alluded to in my speech.

It just seemed to me that what I have suggested could be a reasonable compromise.

Madam President, I do recognize that time is very tight here today. I realize and recognize that the managers want to move the bill ahead.

With the assurances which have been given by the Senator from Kentucky, I would consider withdrawing the amendment, so long as it is understood that we will consider this in the conference with the House and if not successful there we will have additional hearings on it in our subcommittee.

With that understanding, Madam President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. FORD. Madam President, I thank my friend from Nebraska and assure him that we will pursue this with vigor and work together on this matter.

Mr. EXON. Madam President, I thank my friends from Kentucky and Kansas for their usual cooperation. We will work together.

Mrs. KASSEBAUM. Madam President, I ask unanimous consent that Senator Wilson be added as cosponsor of S. 1485.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Madam President, I ask unanimous consent that the Senator from New York [Mr. D'AMATO] be made a cosponsor of the amendment No. 1107 proposed by the Senator from Washington [Mr. ADAMS].

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Mr. President, S. 1485 is not a hastily assembled bill. The Aviation Subcommittee, under Senator FORD's guidance, explored a large number of potential legislative approaches to consumer protection. Committee staff prepared a number of drafts of the pending measure, which were reviewed and revised, before the pending measure was even brought before the committee.

In drafting S. 1485, the subcommittee considered bills introduced by various Members of this body, and—in fact—provisions of many of those bills have been incorporated into the pending measure. S. 1485 represents a compilation of what the subcommittee perceived to be the collective wisdom of those who introduced legislation in the consumer protection area. This bill is truly a consensus measure. The improvements incorporated into S. 1485 over the past 2 days have, I think, made this an even better bill.

Without going into great detail and repeating the points made by the subcommittee chairman, I would like to offer a few observations about the direction and the intent of S. 1485. The bill attempts to maximize the amount of information that flows into the marketplace on airline performance, while minimizing the temptation to impose purely punitive sanctions on air carriers.

That is not to say, however, that if this bill is enacted, there will not be penalties imposed on poor performing airlines. The penalties flowing from this bill will not be imposed by the Congress, or the FAA—rather they will be imposed by free market economics. By making detailed performance statistics available to consumers on flight delays, flight cancellations, lost or delayed luggage, and denied boardings, the bill fills an important void in the air travel market place.

In the air transportation industry, information is vital. There is currently a great deal of information available about fares and schedules. That information is collected, organized, and systematically transmitted to consumers through travel agency and airline computer networks. Information about service and performance, on the other hand is totally lacking.

Consumers who are willing to expend a little time and effort can—by asking the right questions of their travel agent—book low fare flights. If they are willing to book well in advance and meet certain restrictions they can many times fly at bargain basement prices. However, no matter how hard they search, they cannot find quality of service information to match price information. Making quality of service information readily available in the market place is a major accomplishment of this bill.

S. 1485 requires air carriers to submit performance information—to the public on a monthly basis—including ontime performance statistics, the number of passengers arriving without luggage, number of flights canceled at each airport, and the number of passengers denied boarding and the compensation offered. I would like to stress that the information required by this bill is highly useful data. For example, airlines must provide actual arrival time information on each scheduled flight. That information must be in the computer reservation system used by all airlines and all travel agents—and it must be available to the public.

In addition to making service information available to the public, the bill requires modifications in existing airline scheduling practices that will help spread out scheduled departure and arrival times. The bill also directs the FAA to establish minimum elapsed times for flights between city pairs and requires published airline schedules to comply with such realistic minimum times. Uniform systemwide standards are required by S. 1485 for all carry-on baggage as well as disclaimers on discount fare advertising.

In total, S. 1485 constitutes a meaningful effort to make public disclosure of airline performance information a reality. The bill does not rely on arbitrary fines and penalties. It was the judgment of the committee that—while imposing fines and penalties was an easy solution—it was not an effective solution. The committee voted—without dissent—to report out the pending measure. I urge the adoption of S. 1485.

Mr. FORD. Third reading, Madam President.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. FORD. Madam President, I ask unanimous consent to call up Calendar 366, H.R. 3051, the House companion bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3051) to amend the Federal Aviation Act of 1958 to establish minimum standards relating to air carrier passenger services, and for other purposes.

Mr. FORD. Madam President, I move to strike all after the enacting clause and substitute the text of S. 1485, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. FORD. Madam President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Tennessee [Mr. GORE], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Utah [Mr. HATCH], the Senator from Pennsylvania [Mr.

HEINZ] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 88, nays 5, as follows:

[Rollcall Vote No. 361 Leg.]

YEAS—88

| | | |
|---|---|---|
| Adams | Garn | Murkowski |
| Baucus | Glenn | Nunn |
| Bentsen | Graham | Packwood |
| Biden | Grassley | Pell |
| Bingaman | Harkin | Pressler |
| Boren | Hatfield | Proxmire |
| Boschwitz | Hecht | Pryor |
| Breaux | Heflin | Quayle |
| Bumpers | Hollings | Reid |
| Burdick | Humphrey | Riegle |
| Byrd | Inouye | Rockefeller |
| Chafee | Johnston | Roth |
| Chiles | Karnes | Sanford |
| Cochran | Kassebaum | Sarbanes |
| Cohen | Kasten | Sasser |
| Conrad | Kennedy | Shelby |
| Cranston | Kerry | Simpson |
| D'Amato | Lautenberg | Specter |
| Danforth | Leahy | Stafford |
| Daschle | Levin | Stennis |
| DeConcini | Lugar | Stevens |
| Dixon | Matsunaga | Thurmond |
| Dodd | McCain | Trible |
| Dole | McClure | Wallop |
| Domenici | McConnell | Warner |
| Durenberger | Melcher | Weicker |
| Evans | Metzenbaum | Wilson |
| Exon | Mikulski | Wirth |
| Ford | Mitchell | |
| Fowler | Moynihan | |

NAYS—5

| | | |
|---|---|---|
| Armstrong | Helms | Rudman |
| Gramm | Nickles | |

NOT VOTING—7

| | | |
|---|---|---|
| Bond | Hatch | Symms |
| Bradley | Heinz | |
| Gore | Simon | |

So the bill (H.R. 3051), as amended, was passed, as follows:

H.R. 3051

*Resolved,* That the bill from the House of Representatives (H.R. 3051) entitled "An Act to amend the Federal Aviation Act of 1958 to establish minimum standards relating to air carrier passenger services, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Air Passenger Protection Act of 1987".

SEC. 2. (a) Title IV of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371 et seq.) is amended by adding at the end the following:

"SUBMISSION OF CERTAIN INFORMATION

"REQUIRED INFORMATION

"SEC. 420. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, promulgate regulations requiring air carriers to submit to the Secretary on a monthly basis the following information relating to scheduled air transportation between any airports in the United States:

"(1) on-time performance, measured as the average time of actual departure and arrival past the scheduled departure and scheduled arrival time for transportation between each two points served by each air carrier.

"(2)(A) The total number of passengers carried by each air carrier, (B) the number of such passengers who arrived at their final destination without one or more pieces of their checked baggage and who notify the air carrier that such baggage failed to arrive, and (C) what percent the passengers identified in subparagraph (A) of this paragraph are of the passengers specified in subparagraph (B) of this paragraph.

"(3)(A) The number of flights scheduled at each airport by each air carrier, (B) the number of such flights cancelled at each airport, and (C) what percent the flights identified in subparagraph (B) of this paragraph are of the flights identified in subparagraph (A) of this paragraph.

"(4) The number of passengers involuntarily denied boarding by each air carrier, and the compensation offered to such passengers.

"AVAILABILITY OF INFORMATION

"(b) The Secretary shall, with respect to information reported under subsection (a) of this section, take such action as may be necessary to make that information available to the public, including publication of summary information in the Federal Register and the issuance of monthly reports. Such summary information shall be displayed to the public in a clear, concise, and visible manner at all public airports.

"COMPUTERIZED AIRLINE RESERVATION SYSTEMS

"REQUIREMENTS OF INFORMATION IN THE SYSTEM

"SEC. 421. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, amend the regulations regarding computerized airline reservation systems offered to subscribers by an air carrier or any of its affiliates contained in part 255 of title 14, Code of Federal Regulations, to require that—

"(1) for scheduled air transportation between any airports in the United States, the elapsed time shown for each flight displayed in such computer system shall not be less than a minimum realistic time established by the Administrator for such transportation;

"(2) no such computer system shall, for purposes of ordering the display of flight information, assign a weight of displacement for any flight having a scheduled departure time thirty minutes or less after the departure time requested or twenty-nine minutes or less before the departure time requested; and

"(3) each air carrier provide the Secretary with an average of the actual arrival times for each scheduled flight that it operates, based on the actual times of arrival for such flight during the previous month.

"SPECIFIC INFORMATION

"(b)(1) The Administrator shall determine the minimum realistic time under subsection (a)(1) of this section according to a formula to be developed by the Administrator and published in the Federal Register. Such formula shall be based on (A) the distance between the airports; (B) the standard cruise speed for the involved type of aircraft; (C) the typical taxi, landing, and take off times for the type of aircraft involved and, where the Administrator determines it to be appropriate, for the airport; and (D) where the Administrator determines it to be appropriate, meteorological factors.

"(2) The Secretary shall require that the information provided under subsection (a)(3) of this section is included in all schedules published in such computer reservation systems, and that such information is made available to the public.

"PROMULGATION OF CERTAIN REGULATIONS

"SEC. 422. The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, promulgate regulations—

"(1) to establish a standardized definition of a delayed flight, as well as the causes of delays;

"(2) to establish a uniform designation symbol to be used by an air carrier in its schedules to identify aircraft having a passenger seating capacity of thirty seats or less;

"(3) to amend the final rule issued under part 121 of title 14, Code of Federal Regulations, relating to carry-on baggage programs to establish uniform standards for use by all air carriers in controlling the size and amounts of carry-on baggage; and

"(4) to require that any carrier who advertises a fare for particular air transportation but does not make that fare available for all passengers on such transportation must include in any advertisement for such transportation a notice of the minimum percentage of seats on such transportation available at the advertised fare.

"(5) to prevent any carrier from changing the rules or requirements of a frequent flier program to the general detriment of the participants in such program without reasonable notice, or, to prevent a participant in such program from utilizing, during a reasonable period of time after a change in the rules of requirements of such program has become effective, credits accumulated by the participant under the rules or requirements as in effect before such change."

The definition established under paragraph (1) of this section shall include considerations of weather, air traffic control, passenger service, maintenance, and any other safety factor. The Secretary shall require each air carrier, in reporting information under section 420(a)(1) of this Act, to report to the Secretary the cause of its delays. Such information shall be made available to the public.

"CONSUMER HOTLINE

"SEC. 423. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, establish a twenty-four hour toll-free consumer hotline to provide consumer information on air carrier performance records, information as to the rights of consumers and responsibilities of air carriers, and assistance in resolving disputes between consumers and air carriers. Information with respect to the availability of such hotline and its purpose, together with the telephone number of such hotlines, shall be printed on each ticket jacket, and prominently displayed in appropriate locations at airports.".

(b) Notwithstanding any other provision of this Act, the Secretary of Transportation shall not implement any provision of this section, or any amendment made by this section, if the Secretary determines that such implementation will have an adverse impact on the safety of air transportation. If the Secretary makes such a determination, the Secretary shall publish notice of such determination in the Federal Register.

(c) Notwithstanding any other provision of this Act, information reported pursuant to this Act shall not be used by a vendor of a computerized airline reservation system to bias the display of flights or fare information.

(d) The table of contents of the Federal Aviation Act of 1958 is amended by inserting

immediately after the item relating to section 419 the following:

"Sec. 420. Submission of certain information.
"(a) Required information.
"(b) Availability of information.
"Sec. 421. Computerized airline reservation systems.
"(a) Requirements of information in the system.
"(b) Specific information.
"Sec. 422. Promulgation of certain regulations.
"Sec. 423. Consumer hotline.".

SEC. 3. The Secretary of Transportation shall establish an Advisory Committee to determine the appropriate level of capacity in the air traffic control system. The Advisory Committee shall be headed by the Administrator of the Federal Aviation Administration, and shall include representatives of aviation user groups. The Advisory Committee shall submit to the Congress and the Secretary a report on the level of capacity not later than December 31, 1988. The report shall include the levels of traffic which the air traffic control system is capable of handling safely and with a high level of dependability for each year within the five-year period beginning on January 1, 1989, the speed with which the capacity can safely be increased, and what additional resources should be made available to assure maximum safety and system capacity.

SEC. 4. (a). The Congress finds that—

(1) alcohol and drug abuse poses significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, railroads, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, railroads, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the armed forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(b)(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"ALCOHOL AND CONTROLLED SUBSTANCES TESTING

"TESTING PROGRAM

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(2) The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for pre-employment, periodic recurring, random and post-accident testing, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, without lawful authorization, alcohol or a controlled substance.

"PROHIBITION ON SERVICE

"(b)(1) No person may use, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who (A) refuses to undertake, (B) fails to complete a rehabilitation program described in subsection (c) of this section, (C) has previously undertaken or completed such a rehabilitation program, or (D) has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions while impaired by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"PROGRAM FOR REHABILITATION

"(c)(1) Each air carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"PROCEDURES

"(d) In establishing the program required under subsection (a) of this section, the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in this testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by

being treated differently from other employees is similar circumstances.

EFFECT ON OTHER LAWS AND REGULATIONS

"(e)(1) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crew-members, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"DEFINITION

"(f) For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Administrator has determined poses a risk to transportation safety.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other regulations.
"(f) Definition.".

(c) Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l)(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(A) require that all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) be subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(B) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(C) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(D) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(ii) specify the drugs for which individuals may be tested; and

(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(D) require that all laboratories involved in the testing of any employee under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.".

(d)(1) The Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end the following:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct pre-employment, periodic recurring, random and post-accident testing of the operators of commercial motor vehicles, and testing upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(b) TESTING.—(1) In promulgating such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the indentification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall detemine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical quidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory quidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of tests results and medical information (other than information relating to alcohol or a con-

trolled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(f) APPLICATION OF PENALTIES.—(1) Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this Act or any other provision of law.

"(2) The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, without lawful authorization, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary had determined poses a risk to transportation safety.".

(d)(a) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(e)(1) The Secretary shall design, within nine months after the date of enactment of this section and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, without lawful authorization, alcohol or a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this section shall continue for a period of one year. The Secretary shall consider alternative methodologies of implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than thirty months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for fiscal year 1988.

(7) For purposes of this subsection the term—

(1) "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5241); and

(2) "Secretary" means the Secretary of Transportation.

SEC. 5. Section 1601(a)(7) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551(a)(7)) is amended by striking all after "in effect on" and inserting in lieu thereof the following: "the date of enactment of the Airline Merger Transfer Act of 1987, except to the extent any such sections relate to labor protection provisions: *Provided*, That rights, duties, and obligations arising (1) in proceedings commenced before the Department of Transportation prior to April 1, 1987, or (2) pursuant to final orders adopted by the Secretary of Transportation or the Board under sections 408 and 409) and section 414 (relating to such sections 408 and 409) prior to the effective date of termination shall be administered and, as necessary, adjudicated, as if such sections were not terminated.".

SEC. 6. (a) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first and second paragraphs, by inserting ", nor any air carrier or foreign air carrier subject to the Federal Aviation Act of 1958, person controlling such air carrier or foreign air carrier, other common carrier, or person substantially engaged in the business of aeronautics," immediately after "Federal Trade Commission" wherever it appears; and

(2) in the last paragraph, by striking "Secretary of Transportation,".

(b) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(1) in subsection (a), by (A) striking "in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958;", and (B) inserting ", except air carriers and foreign air carriers subject to the Federal Aviation Act of 1958," immediately after "other character of commerce"; and

(2) in subsections (b) through (l), by striking "Commission, Board, or Secretary" and "commission, board, or Secretary" wherever they appear and inserting in lieu thereof "commission or board".

SEC. 7. (a) Section 408(b) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378(b)) is amended by adding at the end the following:

"(4) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to affect adversely the wages and working conditions (including the seniority) of any air carrier employee, the Secretary shall impose labor protection provisions calculated to mitigate such adverse consequences, including procedures resulting in binding arbitration, if the Secretary considers such procedures to be necessary. The Secretary shall impose such provisions unless the Secretary finds that the projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving that there will be no adverse employment consequences or that the projected costs of the imposition of such protection would be excessive.".

(b)(1) Section 1601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551) is amended by adding at the end the following:

"LABOR PROTECTION PROVISIONS

"(f) The authority of the Department of Transportation in section 408 relating to labor protection provisions, the authority in section 204 relating to the exercise and performance of powers and duties under section 408, and the authority to make exemptions in section 416 relating to the requirements of section 408, are transferred to the Department of Labor.".

(2) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 1601 is amended by adding at the end the following:

"(F) LABOR PROTECTION PROVISIONS.".

(c) All rules and regulations issued by any agency or official of any agency in the performance of any duty transferred by subsection (b) of this section shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the Secretary of Labor, a court of competent jurisdiction, or by operation of law.

SEC. 8. (a) The Secretary of Transportation shall compile, on a quarterly basis, information regarding the fares charged and frequency of service offered by air carriers during the previous quarter for scheduled airline service to or from the fifty United States airports with the greatest number of annual enplanements, as determined by the Secretary, at which any one air carrier provides more than 50 percent of the total number of flights offered to or from such airport.

(b) The Secretary of Transportation shall retain any information compiled under subsection (a) of this section for a period of five years after the date of its transmittal.

(c) As used in this Act, the term "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3)).

SEC. 9. (a) The Secretary of Transportation shall, within 90 days following the date of enactment of this Act, take such action as may be necessary to require each such commercial air carrier to disclose to each passenger or his or her agent, at the time of reserving or purchasing a ticket for a flight, the fact that a restroom will not be available on such flight, and to disclose, upon request, a description of the aircraft on which such passenger will be flying.

SEC. 10. (b) The Secretary of Transportation, within 90 days following the date of enactment of this Act, shall, by regulation, prohibit any air carrier from canceling, on the basis of any economic reason, any flight unless such air carrier—

(1) made a reasonable effort to notify each passenger of such cancellation at least 24 hours prior to the scheduled departure time for such flight; and

(2) makes available to each such passenger similar services within a reasonable time as determined by the Secretary of Transportation by regulation.

(3) For purposes of this section, the term "economic reason" does not refer to the cancellation of a flight in order to use the

equipment assigned to that flight to replace other equipment, the timely departure of which has been prevented due to mechanical failure or other factors related to safety.

Mr. FORD. Madam President, I move to reconsider the vote by which the bill was passed.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Madam President, I ask unanimous consent to indefinitely postpone S. 1485.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Madam President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Ms. MIKULSKI) appointed Mr. HOLLINGS, Mr. FORD, Mr. EXON, Mr. INOUYE, Mr. DANFORTH, Mr. PACKWOOD, and Mrs. KASSEBAUM conferees on the part of the Senate.

Mr. FORD. Madam President, let me just take a moment to thank a lot of people, and I am afraid I will miss a lot of people, who put in long weeks, long days, long months to come to the point where we have now passed the airport improvement bill. We have passed the consumer protection bill. We have passed the transfer of mergers from the Department of Transportation to the Department of Justice. Without the full cooperation of Senator KASSEBAUM it would not have happened.

The staff on their side, Guy Clough, and others, I want to compliment them for the good job they have done and, Madam President, Steve Palmer again has been a yeoman, and Martha Moloney, on my personal staff, has worked long days, long weeks, and long months to bring us to this point.

Madam President, I would like to recognize one individual today if I may.

I was fortunate enough several months ago to acquire the services of a young man who is a legis fellow who has extensive background in aviation matters and the first day that he came to my staff, we put him immediately to work, and today he is here and has seen the culmination of the work of many weeks and months that he has put into this legislation, and I compliment him. That is Ed Fell.

So with that, Madam President, I yield the floor.

Mrs. KASSEBAUM. Madam President, I would just like to add that without the fine stewardship of Senator FORD, and of the majority leader's support, as well, we would not have been able to accomplish the passage of two, I think, very substantial constructive aviation bills. I am certainly very appreciative of the cooperation on both sides of the aisle to have accomplished this.

Mr. BYRD. Madam President, I thank both the manager and the ranking manager of the bill, Mr. FORD and Senator KASSEBAUM, for the splendid performance we have just seen this week.

We disposed of three airline bills on the calendar, one dealing with safety, one dealing with mergers, and one dealing with the trust fund, and they have all been handled with expertise, skill, and dispatch.

I personally thank both of them for their teamwork, for their good work, and the Senate is in their debt.

## EXTENSION OF CERTAIN HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

Mr. BYRD. Madam President, I ask that the Chair, under the order previously entered, lay before the Senate Senate Joint Resolution 209, Calendar Order No. 394.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The bill clerk read as follows:

A joint resolution (S.J. Res. 209) to provide for the extension of certain programs relating to housing and community development, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the joint resolution.

Mr. BYRD. Madam President, this measure is under a time agreement. I understand that there will be at least one rollcall vote on the amendment and there could be a rollcall vote on passage. I do not know. I would suggest to Senators that there will at least be one more rollcall vote. Mr. CRANSTON is the manager. He can speak to the expectation as to when that rollcall vote or those rollcall votes will occur.

In my judgment, it would probably not take more than an hour on the measure, but Mr. CRANSTON will know better than I.

So Senators should be alerted to the fact that there will be at least one more rollcall vote this afternoon and, following that, I would hope to hear from the Republican leader as to whether or not we might proceed to the consideration of the independent counsel measure today. I do not want to do that with Mr. HATCH absent, but I have asked the Republican leader if we might get a time agreement on that measure and also I have made some other requests to him and I am awaiting a response.

We hope to have one before too long so that I can indicate to the Senate what the expectations are for the remainder of this day and Monday and Tuesday.

Mr. CRANSTON. Madam President, first, so that Senators will be able to plan their schedules, there are only 10 minutes allocated under the time agreement on the bill and 30 minutes on the amendment. So we can expect a rollcall in at least 40 minutes and possibly less. I do not think necessarily we will consumer the 10 minutes on the bill or the full 30 minutes on the amendment.

This joint resolution is needed to avoid a costly disruption of FHA authority to insure home mortgages starting Monday. They will be out of business, stop. Housing under way will be halted. People planning to get access to a home for themselves and their families will be blocked, once again disrupting the housing industry if we do not pass this measure today unamended.

This measure provides a short-term extension of FHA mortgage insurance authority through November 15. So that this measure can be passed by the House today, we need to pass it in the Senate. We should do so without any delay and without amendment.

This extension would provide time needed to conclude action on the Housing and Community Development Act of 1987. Conferees have made excellent progress, and a conference agreement is just about complete.

Within a very few days we will bring to the Senate floor a sound bill—one that has very prudent funding levels—one that the President should sign. It will include provisions that are needed this year to strengthen housing and community development.

This year's housing bill will be the last FHA extender Congress will ever have to act on because it will provide permanent authority for FHA insurance. It is time to provide that permanent authority. And enactment of the housing bill is the only way it will be done.

I urge my colleagues to pass this short-term FHA extender promptly.

I yield the floor.

Mr. D'AMATO. Madam President, as ranking member of the Senate Housing Subcommittee, I rise today to join with the chairman of the subcommittee, Senator CRANSTON, in support of legislation to extend the insuring authority of the Federal Housing Authority [FHA] of the U.S. Department of Housing and Urban Development. Under this legislation, the FHA mortgage insurance authority would be extended until November 15, 1987. Currently, under Public Law 99-430, the FHA authority to insure home mortgages expires on November 1, 1987.

Both the House and the Senate have passed housing reauthorization bills including provisions for the continuation of this insuring authority. A House and Senate conference committee, of which Senator CRANSTON and I

are members, is close to completing a final housing bill. Unfortunately, a couple remaining unreconciled provisions may take us past the November 1 deadline for the authorization of FHA mortgage insurance. Therefore, Senator CRANSTON and I are sponsoring legislation today that would allow the FHA to continue, without interruption, its operating authority for the numerous mortgage insurance programs through November 15, 1987. This will give the conferees enough time to work out our differences without a threat of an FHA shutdown.

As you know, Madam President, last year the FHA insuring authority became a pawn in a larger battle between the House and Senate over a controversial reauthorization bill of all Federal housing programs. The Congress passed seven short-term extensions. However, during the course of congressional deliberations, the insuring authority was allowed to expire a shocking six times. FHA shut down its operation a total of 51 days. This caused confusion and frustration among many prospective homebuyers. It threatened the housing plans of many low-, moderate-, and middle-income Americans. Furthermore, it destabilized the mortgage and housing financing system in our Nation.

This FHA extender will prevent the insuring authority from expiring on November 1, 1987, while the 1987 housing bill is in conference. The FHA will continue to run smoothly through November 15, 1987, avoiding undue hardship to homebuyers, mortgage lenders, home builders, and the many individuals involved in our Nation's housing industry and financing system.

Madam President, FHA is one of the most successful partnerships ever created between the public and private sectors. During its illustrious 53-year history, FHA has assisted more than 15 million American families realize the dream of homeownership. Let us preserve the integrity of this vital Federal agency. I urge my colleagues to join us and to support this legislation.

Madam President, let me simply say that I am aware of the amendment that will be offered by our colleague from Colorado. I would hope that we would pass this without that amendment so as to assure a continuity for our housing program.

As Chairman CRANSTON has indicated, we have a permanent FHA extender in the housing bill. We are presently at conference with the House. That is the time and the place and manner in which to comprehensively treat this matter as well as all the other housing programs.

I yield the floor.

Mr. ARMSTRONG. Madam President, would the Senator from New York or the Senator from California be able to tell us about how many times we have extended this in the last year or two?

Let me ask the question in a slightly different way.

Mr. GARN. If the Senator from Colorado will yield, I would be happy to answer that question. I cannot give you an exact number, but in the 6 years I was chairman of the Senate Banking Committee, we have faced this issue over and over again. Last year, we extended it at least seven or eight times for a few days at a time, for a few weeks. And finally we were successful in getting an extension during 1 year, during this particular fiscal year, to September 30. That was the longest of the extensions during all of that period of time.

So, for 1 year we took the fear out of the housing markets for the homebuilders and those who want to get FHA mortgages, but now we are back doing it again. We are back to short-term extensions again. And it simply is not the way to do it, particularly with the difficult housing market. Interest rates have gone up again, long-term interest rates. That means jobs, construction jobs, people being able to get into their homes. It creates an incredible uncertainty in the housing market.

Our performance over the past few years has been extremely bad, to be charitable about it, in playing games with the extension of FHA authority.

Mr. ARMSTRONG. Madam President, I thank the Senator from Utah for his explanation.

AMENDMENT NO. 1113

(Purpose: To provide for a permanent extension of the Federal Housing Administration mortgage insurance programs, and for other purposes)

Mr. ARMSTRONG. Madam President, I send an amendment to the desk on behalf of myself, the Senator from Alabama [Mr. SHELBY], and the Senator from California [Mr. WILSON] and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Colorado [Mr. ARMSTRONG] for himself, Mr. SHELBY, and Mr. WILSON, propose an amendment numbered 1113.

Mr. ARMSTRONG. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

After line 7 on page 1, add the following:

SEC. 2. (a) REPEALS.—Each of the following provisions of law is repealed:

(1) Section 217 of the National Housing Act.

(2) The fifth sentence of section 221(f) of the National Housing Act.

(3) Section 244(d) and the last sentence of section 244(h) of the National Housing Act.

(4) The last sentence of section 245(a) of the National Housing Act.

(5) The second sentence of section 809(f) of the National Housing Act.

(6) The second sentence of section 810(k) of the National Housing Act.

(7) The second sentence of section 1002(a) of the National Housing Act.

(8) The second sentence of section 1101(a) of the National Housing Act.

(b) AMENDMENT.—The first sentence of section 2(a) of the National Housing Act, as amended by the first section of this joint resolution, is amended by striking out "and not later than November 15, 1987".

(c) CREDIT LIMITATION.—Any new credit authority (as defined in section 3 of the Congressional Budget and Impoundment Control Act of 1974) which is provided by this joint resolution shall be effective only to such extent or in such amounts as may be approved in appropriation Acts.

Mr. ARMSTRONG. This is a very simple amendment. It makes the FHA program permanent. In fact, the FHA program is permanent.

If you look back through all the history of the programs started by the Federal Government, there are a handful which really stand out above the rest as resoundingly successful. In my opinion, the GI education bill is such a program. That is a program which has worked. It is a program which has fulfilled its intended purpose, which has been cost effective, which has enriched the lives of people who have benefited from it, and which enjoys enormous popular support.

The Interstate Highway Program is another such program. That is a program which is a permanent feature of our country. The Land Grant College Program is another that has been enormously successful.

But if you were going to make any sort of a short list of Federal programs that have been highly successful and which are not, by any reasonable standard or definition, controversial, the FHA loan program is one of them.

So the amendment which my colleagues and I ask you to consider today simply recognizes what is, in fact, the case: that it is a successful program which deserves to be given the status of legislative permanence rather than being renewed for a few days at a time.

Now, the Senator from Utah has told us that it was renewed several times during the last year. I believe that it was permitted to lapse no less than 7 times during 1986. This is crazy. It is bad legislative craftsmanship. But, worse than that, it really works a serious hardship on people who depend upon this program.

It disrupts the housing markets. It makes it very difficult for people who are in the business of buying and selling homes. It creates an impossible situation for those who are homebuyers, if they seek to acquire a home as the program is being subsequently extended and then permitted to lapse and they come up to these crucial moments and they cannot get their loan approved.

Madam President, I believe we are operating under a controlled time. Perhaps, before I complete my remarks, I should ask how much time do I have and how much have I used thus far?

The PRESIDING OFFICER. The Senator has used 2 minutes and 15 seconds. He has 15 minutes. So you have about 13 more minutes to go.

Mr. ARMSTRONG. I thank the Chair. I would like to yield myself from the remaining time 2 minutes and 45 seconds.

The point I want to make—and it really sums up the issue very well—is contained in a letter which I received a few days ago from Dennis Shaydak, a realtor in my home State. He tells about a particular case. I do not think it is an isolated instance, but in fact a situation which is typical and representative of the kind of problem we have when we permit a program like this to be turned on and off once, twice, three, four, five, six, seven times a year. I quote from his letter:

In one particular case I personally had a widow lady selling her home because she was dying of cancer. We had the home sold to an individual who had applied for an F.H.A. loan. The closing was postponed because F.H.A. funding was politically tossed back and forth in Congress. Eventually the funding was extended and the home closed by my client, the widow, suffered unnecessary agony over this situation. I was at a loss to explain to her the politics of why she could not close her home transaction.

Madam President, I think that is just a typical case, except that this particular story had a happy ending. The deal was closed, the widow lady, who is suffering from a terminal illness, did get her money. The house was sold. But there are a lot of deals that did not go through.

To continue to have this on again, off again approach, in my opinion, is unjustified. We pay a heavy cost in human terms for it. And, particularly, I observe, at a time when the financial markets of the country are in turmoil, to have an additional element of instability which makes home transactions more difficult to consummate really does not make a lot of sense.

So, under the circumstances, I hope my colleagues would be disposed to accept the amendment and to adopt it at this time.

Madam President, I reserve the balance of my time and now yield 5 minutes to my colleague from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Madam President, I join with my colleague, Senator ARMSTRONG, from Colorado, in this amendment. I do it for two reasons. One, it is time that we made the Federal Housing Administration a permanent thing so that we do not have to come back over and over. It was pointed out just a few minutes ago by the Senator from Colorado that seven times, I believe it was, seven times last year the Federal Housing Administration authorization was allowed to lapse.

I can recall some instances when I was in the House for four terms when we would be dealing with other housing programs, such as veterans' programs, similar to this. And you say, "Well, why don't we in Congress come back and do something permanent? Why do we have to play football with this year after year and day after day?"

I believe that what we need is some stability out there in the housing market, and this would do it. I am for the housing bill that is coming along in conference, which this would be part of, we would hope.

But why not today, while we have an opportunity, go with this amendment by Senator ARMSTRONG which he offered on behalf of himself and this Senator from Alabama and Senator WILSON from California and make it permanent, and put it to rest? Let people know there is stability there; that we are not going to play with you any more; that you know that the Federal Housing Administration is going to operate, it is going to be there. Because, actually, it has become a part of the fabric of this country. It has really been the leader and has done so much to bring about homeownership.

So let us put it to rest. Let us not play with it any more. That is why I am glad today to join with my colleague from Colorado in his sponsorship of this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Madam President, I commend Senator ARMSTRONG for his commitment and dedication to homeownership opportunities for middle-income Americans. Making FHA permanent will strengthen the security and stability of the FHA program. As the ranking Member of the Housing Subcommittee, I fully support and endorse the intent of Senator ARMSTRONG's amendment.

However, I have grave reservations about the context in which this amendment is raised. If the FHA program were the only program promoting housing opportunties in this Nation, I would support Senator ARMSTRONG's amendment. Fortunately, it is not.

Opportunities provided through the FHA program are only one piece of a much larger howeownership pie. A variety of homeownership opportunties are provided in S. 825, the Housing and Community Development Act of 1987. This bill, the first housing bill to be passed by the Senate in 3 years, is currently being resolved in a House-Senate conference. A final bill is expected to be reported out of the conference committee next week.

If we are to fully address this problem, we must do so in a comprehensive manner. To provide permanent insurance authority for FHA without addressing the broader context of housing policy would be a narrow and inadvertantly unhelpful way of addressing the problem. We must promote solutions that adequately link the whole range of Federal homeownership programs. To address the homeownership problem piecemeal—as the Armstrong amendment proposes to do—would undermine the chances for a broader, more all-encompassing approach to our homeownership problem.

The housing bill provides this broader approach. As budget cuts continue to sober us with fiscal realities, Congress must address national policy with a broader, more long-term prospective.

Senator CRANSTON and I have introduced legislation to extend the insuring authority of the Federal Housing Authority [FHA] of the U.S. Department of Housing and Urban Development. Under this legislation, the FHA mortgage insurance authority would be extended until November 15, 1987. Currently, under Public Law 99-430, the FHA authority to insure home mortgages expires on November 1, 1987.

I believe this temporary extender best meets the present need, without pulling apart essential elements of a broader, more comprehensive solution to homeownership in the Housing bill.

I ask my colleagues to wait a short time so that the Senate may consider a broader approach in a comprehensive Housing bill, on the floor of the Senate in a few weeks.

I understand this is a legislative initiative that will give cover to those who would vote against the totality of the housing bill. So it is not aimed at, really, creating an opportunity for this program to be extended permanently because that is going to be in the bill. Let us understand that those of us who are not sympathetic to this extension at this time are not because, not only do we want the FHA to be a permanent part, which it is in the bill, but because we are concerned about a broad variety of housing programs and opportunities. Opportunities for senior citizen housing, 202, that would be jeopardized without the passage of this bill; community development block grant funds; all of those programs in housing covered under section 825. So that is why this Senator would hope that, notwithstanding that it makes good copy to say we are for permanentizing this program, so we do not have to come forward this year as we did last year and the year before for eight extensions, and I think that is deplorable, but this is not the time to undertake that when we are literally, I think, days away from a bill that would be acceptable by this body.

Mr. CRANSTON. Madam President, I had hoped that the Senator from Colorado, would not offer his amendment. It cannot achieve its stated purpose. I intend to move to table it at the appropriate time.

Every Senator should understand that, if this amendment is adopted, FHA insurance authority will certainly shut down next Monday morning. There would be no way to avoid it.

We are already placed in a very difficult situation by this amendment and the delays it has caused. Two days ago I had achieved clearance on this side of the aisle to pass this resolution by unanimous consent. But the Senator from Colorado objected and forced a delay.

Yesterday the House leadership planned to get around that obstacle by moving by unanimous consent to pass their own identical resolution. However, a Republican Member objected late last night.

So we are in a very bad situation here today. The House will be in session only on a pro forma basis tomorrow, but will not return for a regular session until Monday. I am told that there is still a slight chance that an unamended resolution could be passed by the House tomorrow. So the only way an FHA extender can possibly get to the President's desk before the deadline is for the Senate to pass the House resolution today without amendment.

In fact, House leaders have made it absolutely clear there is no chance the House would pass this resolution with the Senator's amendment on it. House Members are convinced that enactment of permanent FHA authority on a measure like this would greatly increase the likelihood that the President would veto the Housing bill. And they are right.

If we send an amended resolution over to the House, the House would take up the resolution next week, strip off the amendment, and send the measure back here to the Senate. Senators would simply have to revisit this measure again next week.

Nothing would be gained. And several days of FHA operations would be lost.

It would be shameful to bring about widespread disruption in the home mortgage market because of pointless parliamentary maneuvering here in the Congress.

We should have had our fill of that last year, when this kind of maneuvering between the administration and the Congress forced FHA to shut down six times for a total of 51 days when demand was at a record level.

Each interruption of FHA means that thousands of mortgage lenders and hundreds of thousands of families are thrown into uncertainty as mortgage closings are delayed and mortgage commitments expire.

Every missed FHA extension sets off a chain reaction of pain in the economy—among families trying to buy homes, among families trying to sell, and among builders, architects, lenders and others.

Adoption of the Senator's amendment would cause needless harm to the housing industry and to hundreds of thousands of homebuyers across the country. The 51 days of disruption in 1986 hurt 50,000 families in my State of California alone.

The Senator's amendment may seem at first glance to support mortgage lending because it would provide permanent authority for FHA insurance.

I strongly favor permanent FHA insurance authority. I intend to do all I can to win enactment of this year's housing bill, which not only will provide FHA with that permanent authority but also will make other changes in statute to strengthen FHA and make it more useful to Americans in high cost areas.

And I am certain that enactment of the Housing bill is the only way we will get permanent FHA insurance authority soon.

The major housing organizations realize that—and that's why they strongly support enactment of the housing bill, and that's why they strongly oppose adoption of this amendment.

Mr. President, I ask unanimous consent that a letter from the Mortgage Bankers of America, the National Association of Realtors and the National Association of Home Builders be printed in the RECORD at the conclusion of my remarks.

Let me read briefly from that letter. It is addressed to Senators:

DEAR SENATOR: The undersigned organizations respectfully urge the immediate consideration of, and your support for HJ Res 393, legislation to extend the insuring authority for the Federal Housing Administration (FHA) until November 15. Current FHA insuring authority expires on October 31.

FHA has been shaken around too much in recent years by efforts of this administration to undermine Government support of housing with proposals to sell off FHA and proposals to impose fees on its activites. Congress has been able to provide stability to FHA this year. And we should continue to do so by rejecting this amendment.

I urge my colleagues to join me in showing support for affordable housing, to join me in ensuring stability in the mortgage markets, and to join me in tabling this amendment when I make that motion.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MORTGAGE BANKERS ASSOCIATION OF AMERICA, NATIONAL ASSOCIATION OF HOME BUILDERS, NATIONAL ASSOCIATION OF REALTORS,

*October 29, 1987.*

DEAR SENATOR: The undersigned organizations respectfully urge the immediate consideration of, and your support for HJ Res 393, legislation to extend the insuring authority for the Federal Housing Administration (FHA) until November 15. Current FHA insuring authority expires on October 31.

Timely enactment of HJ Res 393 will prevent any interruption of FHA insuring authority, which is vital to moderate income families who seek to own a home, many for the first time. An interruption in the program could result in increased costs either at closing or in monthly mortgage payments if mortgage interest rates should fluctuate.

We support tabling any proposed amendment to HJ Res 393, because House-Senate Conferees on S 825, "The Housing and Community Development Act of 1987," are presently reaching final agreements on a bipartisan housing bill, which contains permanent FHA insuring authority.

We appreciate your interest in this matter and respectfully urge your support for HJ Res 393.

Sincerely,

MORTGAGE BANKERS ASSOCIATION OF AMERICA, NATIONAL ASSOCIATION OF HOME BUILDERS, NATIONAL ASSOCIATION OF REALTORS.

The PRESIDING OFFICER. Who yields time?

Mr. ARMSTRONG. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 8 minutes, 17 seconds.

Mr. ARMSTRONG. I yield 2 minutes to the colleague from Utah [Mr. GARN].

Mr. GARN. I thank the Senator from Colorado. Mr. President, I come to the floor and I suppose with great frustration, but also with a little bit of boredom. Boredom on this issue, because most of the 13 years I have been in the Senate and 6 years I was chairman, we have gone through the same song and dance out here on the floor about extending FHA. Some of us have tried that entire time to get FHA extended permanently and the major reason we have not is because the House of Representatives has used FHA and the home owners and home builders and the realtors of this country as hostages over and over again to try to get other legislation passed. Sometimes housing legislation; sometimes not.

The game gets a little bit old.

I am trying to help my colleagues get a housing authorization bill passed, but that is rather doubtful whether we can or not. I hope so. But the administration at this point is threatening to veto. My guess would be, and I hope I am wrong, that on the 15th, we will be back for another short-term extension.

I would suggest it is time we quit playing games, and let us be frank about it. With all due respect to my good friend from California, and I do not agree with the administration's attempt to raise fees and some of the

things they have attempted to do with FHA, but it was not the administration's fault that this was extended six times last year and expired for 51 days. I think I know; I was out here on the floor for every one of those extensions. It was the House of Representatives playing hostage. I just get very tired of playing silly little games and using people's lives as hostages, at least their housing lives. It is time we got on with it. It is not going to make one darn bit of difference. We outstrategize ourselves in this body.

Here we are outstrategizing ourselves, outthinking ourselves playing the political game. I have been rather involved in housing for a long time, going back 20 years ago to when I was mayor.

Whether that housing bill or not is approved by the conferees and signed by the President depends on a lot of factors between vouchers and new starts and so on. It does not make one whit of difference whether this FHA extender is put on it. But that is the same old game we have used time after time, year after year, as an excuse for not passing a permanent FHA extender.

We could do this today, send it over to the House, take care of this home problem, and the outcome of that housing bill will be identical, whatever we are able to work out on other things. I will work on that process to do it but let us quit playing the parliamentary games and excuses for not doing this. Let us extend FHA permanently and take the uncertainty out of the marketplace.

The PRESIDING OFFICER (Mr. DODD). Who yields time?

Mr. ARMSTRONG. Mr. President, how much time is remaining to the two sides?

The PRESIDING OFFICER. The Senator from Colorado has 4 minutes 50 seconds. The Senator from California has 7 minutes and 18 seconds.

Mr. ARMSTRONG. Mr. President, I would like to save a little time for our colleague from California [Mr. WILSON] who is on the way to the floor. I yield 2 minutes to my colleague, Senator SHELBY.

Mr. SHELBY. Mr. President, I do not believe it has been said any better than was said a few moments ago by my colleague from Utah, Senator GARN, who chaired this committee, who chaired the Banking Committee, who has been active in the housing legislation.

But when we have to go to the floor year after year in the House, where I came from before I came here this year, over and over to extend a program that has a lot of merit like this, something is wrong. You are trying to ride the vehicle.

I think things ought to ride on their own merits.

The Federal Housing Administration can stand on its own merits. I do not see one reason, logically, that we could not today extend this by adopting the amendment offered by the Senator from Colorado and make it permanent once and for all.

I have dealt in housing as an attorney, as a developer, and as chairman of the Veterans' Affairs Committee on housing when I was in the House. I have seen firsthand what this has done. We have an opportunity here today to make something with a lot of merit, as I said earlier, that is now part of the fabric of America, permanent, where we will not have to say year after year or month after month, "We have another crisis at hand. What is it?"

The Federal Housing Administration authorization to exist as an entity is going to expire. Then the sky is falling again. We rush in and try to do this. We do a 15-day extension or a 30-day extension, or we look for something to ride on. I am going to be a supporter of the housing bill. I have been. I served, as the Presiding Officer knows, on the Banking Committee, with him, and I have been an advocate for housing.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. ARMSTRONG. Mr. President, if the managers of the bill wish to use additional time, I would ask if they can use it now so I can save time for my colleague from California.

Mr. CRANSTON. We do not need more time except time for making the tabling motion.

Mr. ARMSTRONG. Then I wonder if I might suggest the absence of a quorum.

Mr. CRANSTON. I would ask that the time be equally charged to both sides.

Mr. ARMSTRONG. It would be a charitable thing if the Senator from California would charge it to his side. I only have 2 minutes remaining.

The PRESIDING OFFICER. The Senator from California has 6 minutes, 40 seconds remaining.

Mr. CRANSTON. I am willing to allocate 6 minutes to a quorum call.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair advises the Senator from California that the time for the quorum call will be charged to his side.

Mr. CRANSTON. Yes.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. I thank my friend from California [Mr. CRANSTON] for arranging it so that his colleague from California could speak. I am advised that I have 2 minutes 40 seconds remaining. I yield 1½ minutes to Senator WILSON and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. WILSON. Mr. President, I rise to give fervent support to the amendment of the Senator from Colorado. All too often we find fault with something in the private sector that we think was not planned well enough for the future. Last year the housing industry was engaged in a housing crisis, but it was not their fault. The fault laid with us. Six times we interrupted FHA financing for a total of a 51-day suspension without which authority I do not know how many young American families were deprived of the opportunities to purchase their own home, satisfying what is perhaps the most typically American goal and dream.

There is simply no excuse for that. I will vote for the extender but I will vote with the greatest enthusiasm to make permanent the financing under FHA. It is almost a right that has come to be expected by so many, and it is a very good and sound thing that we do. It makes no sense to continually interrupt it.

I can only say that those in the industry have suffered needlessly, but perhaps even more to the point, there is something in American life that suffers when hard work and savings and aspirations come to nothing because of some temporary, bureaucratic interruption.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILSON. I urge with all my heart that we make permanent FHA financing. I yield.

Mr. D'AMATO. Mr. President, I wonder if my colleague is aware of the fact that if this amendment passes FHA will shut down Monday. Notwithstanding our looking to permanentize it, the facts of the matter are that we will be doing exactly what we do not want to do. I hope that makes a difference with all of my colleagues.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, I rise in support of the motion to table offered by Senator CRANSTON, chairman of the Subcommittee on Housing and Urban Affairs.

Senate Joint Resolution 209 was introduced to extend the authority of the Federal Housing Administration until November 15, 1987. It is necessary because, without congressional action, the authority for FHA to continue insuring loans will expire on November 1. Quick enactment of short-term extension legislation will prevent an interruption in FHA authority and

allow ample time for enactment of permanent authority and other much-needed reforms of the FHA program that are contained in S. 825, the Housing and Community Development Act of 1987. The House-Senate Conference Committee on S. 825 completed its work this week on all major issues except for funding levels. Final action on the conference committee report is expected next week, well in time to be approved by both houses and presented to the President before November 15.

The amendment offered by the Senator from Colorado could delay enactment of the simple extension, thereby risking another interruption in the FHA program. This amendment would also jeopardize enactment of the important FHA reforms contained in S. 825.

As a member of the Senate Committee on Banking, Housing, and Urban Affairs, I have been a strong and consistent supporter of the FHA which has proved its value by enabling over 15 million low- and moderate-income Americans to become homeowners.

The FHA has been one of the major factors in the rise of the rate of homeownership in the United States from 40 percent in 1930 to over 60 percent today. Unfortunately, the administration seeks to restrict the availability of FHA programs through proposals to sell the FHA to private buyers, raise premiums for insurance, eliminate its availability for certain home loans, and increase downpayment requirements.

I strongly support making FHA authority permanent. Legislation to permanently extend FHA is long overdue, but it should be enacted along with the other reforms that are contained in S. 825 so that administration efforts to weaken severely the FHA program will not occur.

After months of hard work by Chairman CRANSTON and other members of the Housing Subcommittee, we are now very close to enacting S. 825, legislation that will prevent future lapses of FHA authority and assure its continued availability for low- and moderate-income home buyers. Enactment of Senate Joint Resolution 209 today to provide a simple extension until November 15 will set the stage for final action on S. 825 in the next 2 weeks without the risk of another lapse of FHA. The amendment offered by the Senator from Colorado would disrupt this legislative program and risk another interruption of FHA authority, and I therefore urge support for the motion to table the amendment.

Mr. ARMSTRONG. Mr. President, I yield myself the remainder of the time to close the debate.

Unintentionally our colleague from California [Mr. CRANSTON] has really misstated three issues. First, the Senator from Colorado did not delay this debate. The time and place of debate on this bill was the choice of the manager and majority leader. I have been ready to debate at any time.

Second, he suggests that this is a ploy by those who wish to defeat the housing bill—not true. Ask my friend from Alabama who is a supporter of the bill and who continues to support it.

Finally, he says the amendment is opposed by major housing organizations. I called the president of one of those a few minutes ago just after I learned of the letter, and he said, "The letter says what?" It was the first he had heard of it.

This is a simple issue, Mr. President. Shall we play political football with housing or shall we make this great program permanent? We should do that today, and I hope we will.

The PRESIDING OFFICER. The time of the Senator from Colorado has expired.

The Senator from California.

Mr. CRANSTON. Mr. President, before moving to table, I would like to note that the Senator from Connecticut, who is the Presiding Officer at the moment in the Senate, was the original proposer of the legislation for permanent FHA status. I was a cosponsor early on with him as were others. That is our desire, to get permanent status for FHA so that we will no longer have these stoppages. But all Senators should be aware that if they vote for the Armstrong amendment, that will mean that FHA will close down on Monday, and maybe close down for several days. We do not want that to happen. That would disrupt the markets and disrupt and harm many, many Americans.

For those reasons, which have been well expressed by the Senator from New York, my friend and colleague, and the ranking member of the subcommittee, I now yield back the remaining time here and move to table the Armstrong amendment.

Mr. ARMSTRONG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from California to lay on the table the amendment of the Senator from Colorado. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Montana [Mr. BAUCUS], the Senator from New Jersey [Mr. BRADLEY], the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Utah [Mr. HATCH], the Senator from Pennsylvania [Mr. HEINZ] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 64, nays 28, as follows:

[Rollcall Vote No. 362 Leg.]

YEAS—64

| | | |
|---|---|---|
| Adams | Ford | Murkowski |
| Bentsen | Fowler | Nunn |
| Biden | Glenn | Pell |
| Bingaman | Graham | Pressler |
| Boren | Grassley | Proxmire |
| Boschwitz | Harkin | Pryor |
| Breaux | Hollings | Reid |
| Bumpers | Inouye | Riegle |
| Burdick | Johnston | Rockefeller |
| Byrd | Kennedy | Roth |
| Chafee | Kerry | Sanford |
| Chiles | Lautenberg | Sarbanes |
| Cochran | Leahy | Sasser |
| Cohen | Levin | Simpson |
| Conrad | Lugar | Specter |
| Cranston | Matsunaga | Stafford |
| D'Amato | McConnell | Stennis |
| Daschle | Melcher | Stevens |
| DeConcini | Metzenbaum | Weicker |
| Dixon | Mikulski | Wirth |
| Dodd | Mitchell | |
| Exon | Moynihan | |

NAYS—28

| | | |
|---|---|---|
| Armstrong | Heflin | Quayle |
| Danforth | Helms | Rudman |
| Dole | Humphrey | Shelby |
| Domenici | Karnes | Thurmond |
| Durenberger | Kassebaum | Trible |
| Evans | Kasten | Wallop |
| Garn | McCain | Warner |
| Gramm | McClure | Wilson |
| Hatfield | Nickles | |
| Hecht | Packwood | |

NOT VOTING—8

| | | |
|---|---|---|
| Baucus | Gore | Simon |
| Bond | Hatch | Symms |
| Bradley | Heinz | |

So the motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate will proceed immediately to third reading of the joint resolution.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent to address the Senate for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, I congratulate my colleague from California, Mr. CRANSTON, and my colleague from New York, Mr. D'AMATO, on their victory. It is the will of the Senate we are not going to make the FHA permanent in a vote which

occurs today. Nonetheless, we should do so at an early date.

I believe most Senators who vote to table my amendment did so in the belief that they would get a permanent extension in the housing authorization bill which is now in conference. Indeed, if that happens, then the issue will have been laid to rest.

I frankly am very skeptical that the housing bill now in conference will ever be enacted into law.

So I just wanted to make the point that if my suspicion proves to be correct and if November 15 comes around, I would be hopeful that we could take another look at this issue and the Housing Loan Program which has been such a great success would not again be held hostage to another short-term extension.

So I would appeal to my friends from New York and from California, and others who are interested in this matter, that we not let this session of the Congress adjourn without taking action on some bill or another that can be enacted to make FHA loan programs permanent.

I thank the Chair and I thank my colleagues.

The PRESIDING OFFICER. The time of the Senator from Colorado has expired.

Mr. DIXON. Mr. President, I rise to oppose the Armstrong amendment to Senate Joint Resolution 209.

On March 31, 1987, this body approved S. 825, the Housing and Community Development Act of 1987. Among other provisions, it makes sure that the FHA Mortgage Insurance Program remains uninterrupted by providing permanent lending authority.

House-Senate conferees are intent on reporting for final action the first major housing authorization bill since 1980. Conferees have approved nearly all of the differences between their respective bills. Only a few issues remain outstanding.

Any attempt today to provide permanent authority for FHA can only stall and probably abort the efforts being made by the House-Senate conferees to soon report a much needed housing authorization bill.

Mr. President, Senate Joint Resolution 209 provides a short-term extension for the FHA program, through November 15, 1987. This legislation is offered because a previous short-term extender is due to expire on November 1, 1987.

I am sure that many of my colleagues remember the six times last year that the FHA program was shut down due to Congress' failure to enact a housing authorization bill. The shutdown extended for a total of 51 days during a time when the FHA program was at its highest demand. This was an unprecedented imposition placed on the housing industry, causing a disruption in the lives of many Americans who were attempting to sell or buy a home, or refinance a mortgage.

With the current instability of the economy, we, in Congress, cannot contribute to the hardships many Americans are encountering. Failure to provide the short-term extension for the FHA program would do just that. It would damage the housing industry which is a major pillar in the economy.

Mr. President, at this time, I cannot support the Armstrong amendment, and urge my colleagues to oppose it, and to support the FHA short-term extension.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order the question now occurs on the passage of the joint resolution.

The joint resolution, having been read the third time, the question is, Shall it pass?

So the joint resolution (S.J. Res. 209) was passed, as follows:

S.J. RES. 209

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That each provision of law amended by Public Law 100-122, including those provisions amended by section 2 of such Public Law, is amended by striking out "October 31, 1987" wherever it appears and inserting in lieu thereof "November 15, 1987".

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there now be a period for morning business, that it extend not beyond 1 hour, and that Senators be permitted to speak therein for not to exceed 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## SCHEDULE

Mr. BYRD. Mr. President, let me just say one further thing and then I will yield the floor. This is for the information of all Senators. There will not be any more rollcall votes today.

As to whether or not we have a session Monday, it depends on whether or not I can get a time agreement on a matter, and I will say this, however, that later today I am going to move to take up the energy-water appropriations bill. I believe I am going to be faced with a situation where there is going to be some unlimited debate on the motion to proceed. I will make that motion to proceed and I will offer a cloture motion and that will mean that we will vote on the motion to invoke cloture on the motion to proceed to the energy-water appropriation bill on next Tuesday 1 hour after the Senate comes in, and it will come in at around 8:30 that day, so there will be a vote at, say, 9:30 or some such. That will be a 30-minute rollcall vote, that being the first rollcall vote of the day, and the call for the regular order will be automatic.

I should say, and I am going to repeat this from now on, that first rollcall vote I make a 30-minute rollcall vote for the convenience of Senators, and the purpose of it is to get Senators here and get business going on this floor so we do not have to spend 2 hours or 3 hours on the telephone getting this Senator or that Senator to come over here and start managing a bill and call up amendments, so that is the purpose and it works.

But having said that, Senators should not forget that the time under the order that was entered at the beginning of the 100th Congress on rollcall votes is 15 minutes. That is a limitation on rollcall votes.

I am trying to encourage Senators to come to the Senate when the warning bells first ring and not wait until the warning bells ring the second time, and then wait until the last minute and they ask, "Mr. Leader, hold that for me." It is not going to work. We have to discipline ourselves. So I repeat that.

But there will be a cloture vote on next Tuesday. If it means we have to come in on Monday, fine; if I can get consent that the cloture motion mature on Tuesday without coming in Monday, that is fine.

I also want a time agreement on the independent counsel bill. If we get a time agreement on the independent counsel bill, we will not come in Monday.

I yield the floor.

Mr. ADAMS. Mr. President, will the majority leader yield for a question?

Mr. BYRD. I yield.

Mr. ADAMS. Is it my understanding that it will be the intention of the majority leader as soon as morning business is finished to move to consider the bill? Some of us have an objection, but we do not want to interfere with the schedule. Was it the intention of the majority leader that we make a few remarks at the time that the majority leader files a cloture motion and we can perhaps agree at that point on whatever procedure he may wish to offer to us?

Mr. BYRD. Following morning business I will then move to go to the energy-water appropriation bill and

the cloture motion. If the Senator wants to speak on that motion he may do so. If he does not, once I get the agreement on the independent counsel bill, we will call it quits for today.

Mr. ADAMS. I thank the majority leader.

Mr. BYRD. I yield the floor.

## THE FARM CREDIT SYSTEM NEEDS QUICK ACTION

Mr. HEFLIN. Mr. President, I rise, today, to bring to the attention of the Senate, the President of the United States, and specifically the Farm Credit Administration and the Secretary of Treasury the urgent need for quick action to provide assistance to the Farm Credit System. As I am sure that each of my colleagues is aware, the Farm Credit System has recently been experiencing some financial hardships that have been brought on by numerous factors. I believe that every action must be taken, and every avenue must be pursued that would provide assistance to the Farm Credit System, and thus help the farmers of Alabama and America.

S. 1665, a bill to provide assistance to the Farm Credit System, has been under consideration by the Agriculture Subcommittee on Agricultural Credit, and I urge the subcommittee to go ahead and complete action on this bill in the very near future and send it to the full committee for quick consideration and passage. Immediately thereafter, I am hopeful that the Senate leadership will bring this bill to the floor for consideration by the full Senate. In my judgment, this is one of the most pressing matters awaiting action by Congress, today, and action has been delayed for too long already.

I also urge the President of the United States, the Farm Credit Administration and the Secretary of Treasury to take full advantage of provisions passed by Congress in the Farm Credit Act Amendments of 1985 that enable the Secretary of Treasury to provide assistance to troubled Farm Credit System institutions if the Farm Credit Administration requests such assistance. This would provide needed stability to the system. I understand that the Farm Credit Administration Board of Directors considered the question of certifying that this assistance was needed back in May 1987, and that at least one member of the Board supported this alternative. I urge the Farm Credit Administration to reconsider this alternative, and to work with the administration and the Secretary of Treasury to take every available action to come to the aid of the Farm Credit System.

Mr. President, simply put, Congress has given the Farm Credit Administration and the Secretary of Treasury the authority and the tools to take remedial action and infuse capital into the Farm Credit System. I call upon them to exercise this authority and to make use of these tools.

Despite some relative improvement in the financial performance of some districts of the Farm Credit System during the first 6 months of this year that resulted in smaller losses suffered by the Farm Credit System, this improvement was not shared throughout the Nation. The immediate action of the Farm Credit Administration and the Secretary of Treasury, and the expedient enactment of the legislation before the Senate is necessary if we wish to forestall the potential crisis which has been projected by the Farm Credit System which could devastate farmers, ranchers, and their cooperatives throughout the Nation. While the Government, unfortunately, often only reacts to disaster, after the fact, there is an opportunity, here, to prevent potential disaster by quickly providing assistance to the Farm Credit System.

I hope that this opportunity will not be lost by postponement or delay. Inaction will only work to the detriment of the American farmer. Let us give all priority to this available action and legislation. For the last 6 years, the farmers of America and my home State of Alabama have been besieged by the worst agricultural conditions since the Great Depression. Many have not weathered this storm. Those farmers and their families who have survived cannot afford another disaster.

Farm Credit System institutions are now extremely vulnerable to unexpected changes in borrowers' cash flows. Additionally, system institutions are not forecasting significant improvements in overall loan portfolio quality. And, most importantly, system banks are still and will continue to be burdened by extremely high levels of nonearning assets and high-cost debt.

Furthermore, the Farm Credit System reported to Congress earlier this year that as many as six system entities could experience total capital deficiencies by December 31, 1987. The Jackson district is among these six regions, and as Alabama is a part of this district, I am greatly troubled by these published reports and the overall implications that such a development could have on Alabama and the entire Nation.

Adding to overall concern regarding the Farm Credit System are current collateral deficiencies projected for later this year for system institutions. Various actions designed to mitigate against negative total capital positions have been, and will continue to be pursued by the Farm Credit System. However, the impact of these actions cannot be predicted and some fear these actions may not be adequate.

The Farm Credit Act Amendments of 1986 were enacted by Congress as a temporary measure to allow system entities to retire their farmer/borrower capital stock at par value even though such stock may have been impaired as determined by generally accepted accounting principles. Whenever a farmer receives a loan from the Farm Credit System, he must purchase, as a condition of that loan, this capital stock in the Farm Credit System. This temporary remedy has been implemented and has worked well to provide stability to the Farm Credit System. I believe that the amendments of 1985 which would allow the Secretary of Treasury to infuse the Farm Credit System with additional capital should be utilized, as well, to further stabilize and dispel any uncertainty in the system.

Mr. President, the farmers of America depend on the solvency of the Farm Credit System for their own financial stability. In my home State of Alabama, alone, over 10,000 farmers and other rural borrowers have loans with the system which total over $600 million. Nationwide, the Farm Credit System has over 750,000 borrowers representing over $50 billion in loans. The Farm Credit System was first created in 1916, and through the years has played a crucial role in providing critical capital for both the acquiring of farm real estate, and for the production of agricultural commodities. Since its establishment, the system has been instrumental in helping the American farmer to become the provider of the world.

The Farm Credit Administration, the President of the United States and the Congress have no alternative but to quickly address this issue, and assist the Farm Credit System, ensuring that it continues in its important and irreplaceable role on a sound financial footing. Again, I urge the Farm Credit Administration, the Secretary of Treasury, and the President to examine and utilize all available alternatives to strengthen the Farm Credit System, and I urge the Senate Committee on Agriculture, and the Senate leadership to work together to gain passage of a good bill as soon as possible.

Thank you, Mr. President.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have been listening with great interest to my friend and colleague from Alabama. His appeal to move forward swiftly with a workable farm credit rescue package could not have been better said than has just been enunciated by the Senator from Alabama. Everything that he has basically said is duplicated in the State of Nebraska where we have a farm credit head-

quarters and the other States that depend upon that Omaha farm credit facility for needed loans. It is an especially critical time and I hope that we can move forward briskly.

Mr. President, I have here a letter under date of October 20 from the president and chief executive officer of the Farm Credit Services in Omaha, NE, that I think is very pertinent to the discussion we are having right now and further underlines the necessity for prompt action. I quote from the letter:

As of November 1, the bank's rate charged to its AAA borrowers (those with the lowest credit risk) will be increased 0.25 of one percent, an adjustment which will effect approximately 14,000 Land Bank borrowers in Iowa, Nebraska, South Dakota and Wyoming who have chosen a variable loan rate product. We have not, at this time, raised rates to Land Bank class AA or A borrowers having a variable loan rate.

That fact at this particular time, when the Farm Credit System in Omaha is raising its rate, sends a chilling signal, I suggest, to the deep difficulty that we are presently experiencing. Nothing could be more harmful than a raise in interest rates at this particular juncture. It highlights the deepening problem.

I ask unanimous consent, Mr. President, that the letter from the Bank for Cooperatives that I have just referenced be printed in full at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. EXON. I also ask unanimous consent, Mr. President, that following that letter there be printed in full a letter that I recently wrote to several Senators involved in the farm credit deliberations and other farm State Senators with regard to some concerns that this Senator had with the way that we are approaching this rescue effort. I ask unanimous consent that a copy of that letter be printed in full following my remarks, as well.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. EXON. Mr. President, the situation that confronts us is a great uncertainty today as to what we are going to do about probably the farmers' biggest problem today, second only to low cash prices, and that is the fact that interest rates are simply eating those alive who are in the most serious of difficulties. It can be said that those farmers and ranchers who have no debt are not adversely affected, particularly by a raise in the interest rates. But those who are in debt and who owe money are the ones that are being severely handicapped with not only the high interest rates that they are paying now but the further increases that have been outlined in the letter that I have made reference to from the Omaha bank.

Suffice it to say, Mr. President, we have to do something very soon. I hope, as I pointed out in the following letter to my colleagues, that we would not just "paper over" the deep and difficult problems that we have in the Farm Credit System today and just put it off, as we are prone to do from time to time, to address another time, another day.

I guess I have some concerns, Mr. President, with the bare facts, and the bare facts are that there are about $50 billion-plus in the farm credit portfolio across the Nation.

Yet, we are proposing a "rescue effort" of somewhere between $2 and $4 billion. Supposedly that is going to solve the problem.

Those of us who have had some experience with agriculture the last few years understand that, if you have a $50 billion agricultural portfolio and with the shrinkage that has happened in assets of farmers that preceded the stock market crash, then you could well understand that, at least 20 percent of that $50 billion portfolio, or roughly $10 billion, might be needed to keep this system solvent.

So I would hope as we proceed on this bill we could look realistically and not come forth with a program that is just going to cover up the gaping cracks in the financial wall of agriculture—just paper that over and say that will get us by the present period.

I would like to close, Mr. President, simply by addressing the fact, once again and very sincerely, that there are deep times ahead in agriculture. Those who have had any study or understanding of history should realize and recognize that in the late 1920's, the stock market crash at that time was preceded by a collapse in farm prices. That was followed by the crash of the stock market in 1929. Of course, thereafter followed one of the greatest upheavals in the economic wellbeing of the United States and the world that we have ever seen.

This is just another way of saying that all too often, Mr. President, we either do not read history or, if we read it, too many do not understand it; and if they understand it, they do not realize that history does have a way of repeating itself.

What I am saying, Mr. President, is that when the farm crash occurred 2 or 3 years ago, it was considered just one of those isolated parts of the economy of the United States and everything else was going to turn out well. I would suggest that when a very important part of the economy, the agricultural sector, has had the difficulties that it has had, it is no wonder that we are having a tremendous difficulty today with the great downturn on the stock market.

Mr. President, I hope that history is not repeating itself. If we can be successful, Mr. President, in coming up with some kind of a workable end to the dilemma that confronts us economically, with the conference that is going on now between the White House and the Congress, then we might be able to escape the consequences of the deep economic downturn that we have seen in the past.

I just hope that we will be smarter this time. I hope that we will be more specific in addressing the concern. The worst thing we can do is to paper over the problem and say all is well.

Mr. President, I yield the floor.

EXHIBIT 1

FARM CREDIT SERVICES,
*Omaha NE, October 20, 1987.*

Hon. JAMES J. EXON,
*U.S. Senate, Hart Senate Office Building, Washington, DC.*

DEAR SENATOR EXON: In analyzing loan data, our records show that over 80 percent of Farm Credit borrowers have been working hard to keep their loans current during these difficult times. These borrowers have remained loyal to the System and we in turn have worked hard all year to improve service and keep their rates competitive. Because you may be contacted by some Land Bank borrowers, I want to inform you in advance of an increase in interest rates charged by the Federal Land Bank. As of November 1, the bank's rate charged to its AAA borrowers (those with the lowest credit risk) will be increased .25 of one percent, an adjustment which will affect approximately 14,000 Land Bank borrowers in Iowa, Nebraska, South Dakota, and Wyoming who have chosen a variable loan rate product. We have not, at this time, raised rates to Land Bank class AA or A borrowers having a variable loan rate.

Macro economic conditions over the past months have caused major banks in the U.S. to raise interest rates charged to their best customers. These events include a dramatic three-day decline on the New York Stock Exchange, recent efforts by the Federal Reserve to ease concern over rising inflation, a continuation of significant Federal budget deficits and other issues. These pressures have affected the entire banking industry, including the Land Bank. Although everyone would like lower rates, it makes good business sense that the FLB respond more quickly to events which impact our cost of funds. We also expect to "track" with prevailing rates more closely in the future as they fluctuate according to national and world economic events.

No matter which direction interest rates go in the future, I want to emphasize the fact that we have many options for those borrowers who prefer the stability of a fixed rate program rather than a variable loan rate program, including one, three, five, seven, 10 of 15-year fixed rate options. The choice between fixed or variable rate products is a decision only the borrower can make after a close examination of his or her financial condition. In any case, the Land Bank now provides a wide range of credit products and offers individuals the opportunity to make their own decisions in choosing an interest rate program which best fits their operation.

We have tried to keep you informed of events as they occur in our district and I wanted you to know about this adjustment in the event you are contacted by concerned borrowers. We have kept rates as reasonable

as possible for as long as possible but the Land Bank is impacted by the broader pressures of the economy that effect all lenders, and interest rates all across the nation are being similarly adjusted. If you have concerns or questions about this adjustment, please contact me directly.

Thank you for your continued support of the Omaha district and the Farm Credit System.

Sincerely,

JAMES D. KIRK,
*President and Chief Executive Officer.*

EXHIBIT 2

U.S. SENATE,
*Washington, DC, September 28, 1987.*

Hon. PATRICK J. LEAHY,
*U.S. Senate, Washington, DC.*

DEAR PAT: At this writing I am not yet convinced that the attempts to rescue the Farm Credit System are adequately "tuned" to the borrowers, especially those in difficulty, or the future soundness of the System. The worst of all possible world would be legislation which "papers over" the System's current serious financial problems and simultaneously prescribes a "patent medicine" solution to the serious financial ills of the borrowers. We should do it right or not at all.

"The System" needs major surgery, not an aspirin and consultation another day. Many of its borrowers are on their financial death beds, most through no fault of their own, and will surely perish if it is "business as usual" until next month or next year. A pat on the back and a bourbon "hot toddy" may make them feel better temporarily, but it is no cure.

The $2 to $4 billion infusion of funds to the System that I have heard about appears shockingly insufficient on its face. The facts are that the System's outstanding loans total roughly $50 billion. Given the tragic agricultural experience of the last few years and the significant shift of many financially sound borrowers to private credit markets, I suspect the System could be facing losses of at least 20 percent. If so, they would require at least $10 billion of new capital. If that is the case, what is this $2 to $4 billion proposal? Do we in the Congress know the facts or are we working from "doctored figures" that cover up the depth of the problem? We had best find out where we are and where we are going. I am concerned that the prime focus may be on "saving the System" and incorrectly assuming such action will "save" the borrowers.

I have before me an actual spread sheet and cash flow from a Nebraska farm operation that highlights the problem. This farmer has never missed a payment on principal or interest on his Federal Land Bank loan and has been a successful farm operator all his life. He is indeed a typical Nebraska farmer of substance. Here is his tragic picture and I wonder if we are doing anything in the proposed legislation that would help him. This farmer will come in to testify and, if interested, I will furnish copies of his detailed information to me on request.

Unfortunately, this farmer's problems are all too common. Even with the benefit of federal farm programs his situation is dismal. Assuming government support of $2.80 a bushel for corn (the cash price is now about $1.50) and no new equipment purchases (his present equipment is old and all but worn out) he would be unable to meet his Farm Credit System obligations. With no payment of principal and interest, he could go from a position of owing $686,905 in 1986 to $1,040,973 in 1989. Increases above his original 8.25% interest rate have cost him $211,035 since 1979. He knows that his operation will not cash-flow and of all the culprits bedeviling him, 13% interest is the most oppressive.

What will the proposed "bail out" of the Farm Credit System do for him? Little, if anything, I suspect. I have been advised that at best the "bailout" of the system may reduce the above farmer's interest by ½ of 1 percent. In the farmer's case cited above this would be meaningless as far as survival is concerned.

With all due respect to those who are trying to restructure the Farm Credit System constructively, the signals I am receiving make me fearful that some are being led to believe that saving the System is the same as saving the typical remaining family farmer borrower. That is not necessarily the case.

If, as some maintain, by a $2 to $4 billion infusion of money the System can "restructure" loans and give farmers a ½ of 1 percent break on nominal interest rates, it is a doomed policy for many of the System's current borrowers. Oh yes, I can see how the System managers can thus maintain their operations and use the "break" of ½ of 1 percent interest rates to attract back some of their borrowers who have fled to the commercial sector. But what about current System borrowers who I am fearful will be wiped out by this contemplated "grand compromise" to save the System.

I am strongly supportive of the secondary mortgage market concept for rural banks. I believe this will be helpful in many instances to the borrowers. But if this is essentially the only direct benefit to the farmer-borrowers plus the "break" of only ½ of 1% on interest, then there is a question of whether the System is worth saving from many borrowers' perspectives.

A recent prediction from some Nebraskans indicated there would likely be loss of System jobs in Nebraska if the Omaha district merged with the St. Paul district. The rationale was that the Omaha facilities were older and the St. Paul facilities were more spacious. It seemed to me that if the Farm Credit System planned reorganization to accomplish overhead savings, they would be interested in consolidating into the older, less expensive facilities which would favor Omaha. My question is, are we considering forcing the System to dispose of their more luxurious facilities, move into the less pretentious offices, thereby converting the more valuable assets into working capital for the financially troubled operation? The key question, in my view, is not who moves where, but whether all are prepared to make the sacrifices necessary to sustain the System to assist the agricultural producers.

Another overriding question not yet addressed is the level of federal subsidy prices required in the out-years to make restructuring of the System and its borrowers' obligations feasible? With the Gramm-Rudman "miracle" hanging over the head of agriculture appropriations like the axe over the chicken's thin neck, there needs to be a clear understanding that to make any farm credit rescue work, the agricultural budget can't be cut.

I stand ready to be of constructive assistance in this important undertaking, but suggest we do it right.

Sincerely,

J. JAMES EXON,
*United States Senator.*

The PRESIDING OFFICER. The Senator from Nebraska yields for a question from the Senator from Alabama.

Mr. HEFLIN. The point we are making is, of course, that we need an overall rescue and then need the use of the provisions and the tools that are already in law for the President and the Secretary of the Treasury to take advantage of and to infuse capital into any bank in the Farm Credit System that may be in a shaky condition today.

I think you have pointed that out and I congratulate you on your statement that you have made. I am delighted to realize that you and other Senators from farm areas realize the crisis that we are in, in regards to this farm credit problem. I congratulate you.

Mr. EXON. Mr. President, I thank my friend from Alabama. He has said it well once again.

It would be my hope that the message that we are sending forth here on the Senate floor now would be heard at the White House. And by the leadership of the House and the Senate, who are carrying on the present negotiations with regard to the budget difficulties.

I would hope, Mr. President they would maybe take into consideration some of the suggestions that have been made here today and recognize that just solving the budget problem per se may not be enough, even if they can come up with some kind of workable compromise. Maybe, indeed, they should be taking a look at what started the tumble of the economy in America and what started that, of course, is what started it in the late 1920's. That was the collapse of the agricultural sector.

So I do hope that those conferees will take a look at the farm sector and not just put it aside and say: Well, we have taken care of that or we are going to take care of that with the farm credit rescue effort that is supposed to come to the floor in the near future.

I would hope that they would look at what tools they have now under present law to move aggressively, where certain parts of the agricultural sector of America need help and need help now. They have some tools to work with. Maybe, just maybe, this is the time to implement those. I yield the floor.

The ACTING PRESIDENT pro tempore (Mr. GRAHAM). The Senator from Nebraska yields the floor.

The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

## THE NOMINATION OF JUDGE GINSBURG TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. SPECTER. Mr. President, in the immediate wake of the nomination of Judge Ginsburg to the Supreme Court of the United States, there are already some signs that positions are beginning to harden, even though at this moment it is less than 24 hours since President Reagan announced his nomination of Judge Ginsburg. Mr. President, I urge my colleagues in the Senate, and all Americans, not to rush to judgment on the nomination of Judge Ginsburg.

We have a deliberative process to undertake. We have hearings before the U.S. Senate. I would urge my colleagues not to formulate positions or take stands at this early time. I would suggest, Mr. President, that the nomination proceedings as to Judge Bork did not constitute the Seante's finest hour of the 14 members of the Judiciary Committee had taken positions before the Judiciary Committee hearings ended; really before the Judiciary Committee hearings started. Then, more than 51 U.S. Senators announced positions as to Judge Bork before the committee report was filed and before there was floor debate. This undercut the really unique function of the U.S. Senate as the world's greatest deliberative body. In fact, no deliberation took place on Judge Bork's nomination on this floor.

By the time the issue came to the Senate floor, positions had already hardened, arguments were falling on deaf ears, and it was really pro forma. There are strong reasons to believe that Judge Bork's nomination did not receive the process which was due.

We are now embarked on another nomination, that of Judge Douglas Ginsburg. Already the people have started the ideological argument with people dividing into camps. At this early stage I think there is time to change that approach. The news stories are filled with contentions that one faction headed by the Attorney General of the United States took one position and another faction headed by the Chief of Staff of the White House took another position. Mr. President, I do not know whether any of that is true. If it is true, I would suggest that it is not important.

What is important is the qualification of Judge Ginsburg to be on the Supreme Court of the United States. In this city, regrettably, people are frequently more interested in claiming victory for what is happening than they are in the substantive result of what is happening. If that becomes the order of the day as to Judge Ginsburg, then a very important process in the U.S. Senate will be defeated. At the very outset we ought to give this man a chance.

The presumption of innocence, one of the most hallowed of all American institutions, is equally applicable to a nominee to the Supreme Court of the United States.

Why try and convict him in absentia before there is even a hearing?

I think we really do have to hold back, Mr. President. I think when Judge Bork spoke out 3 weeks ago today asking that voices be lowered, that he sounded a clarion call for deliberative proceedings on Supreme Court nominees. Voices ought to be lowered and we ought to find out about the man, we ought to listen to evidence, and we ought to proceed with the hearings.

Mr. President, it is my hope that we will proceed to the hearings very promptly. I am not sure whether we can start them in 3 weeks or 4 weeks, or what the precise date is. But we do not have the voluminous paper trail with Judge Ginsburg which we had with Judge Bork.

Judge Bork had approximately 150 opinions. He had 80 speeches. He had numerous law journal articles.

I asked Judge Ginsburg about this and he said he has written approximately 20 opinions and he has a few law journal articles. It will be possible to review the paperwork in a much more expeditious manner than it was in Judge Bork's proceedings.

Then I think we ought to commence the hearings as early as possible. I do not think we ought to rush. I do not think we ought to act in haste. We ought to take whatever time is necessary and then proceed with the task.

We sat very late on the Judge Bork hearings, sometimes as late as 10 p.m. We worked on Saturdays. That practice could be followed with the nomination of Judge Ginsburg, as well.

Mr. President, I think it is entirely possible that the issue could be resolved by the U.S. Senate before the end of the year. That would require our changing the adjournment date of November 21. That might require working in December. That might require only having Christmas off. But I think it entirely possible that that could be accomplished. I believe it is very much in the national interest.

At the present time the Supreme Court of the United States is operating with eight Justices. Already one important case was decided by an evenly-divided Court, three to three. There will be other decisions where the decisions will be evenly divided. The ninth Justice is absolutely imperative.

Mr. President, what I know about Judge Ginsburg is positive. I saw his work as assistant attorney general in charge of the anti-trust division and it was good work.

He has excellent academic background and good professional qualifications.

That does not tell the entire story, of course. There needs to be an inquiry into his judicial philosophy and his approach. I am optimistic at this moment that Judge Ginsburg will respond to questions which will enable us to determine his views on judicial review, for example, the supremacy of the U.S. Supreme Court on interpreting the Constitution, Marbury v. Madison.

You would think in 1987, 104 years after the decision in Marbury versus Madison, that decision would no longer be questioned. But in some quarters and some minds it is.

I hope he will respond to questions on the Bill of Rights, due process, and the 14th amendment, the issues of jurisdiction, and certain philosophical opinions. In my opinion, we cut new ground during Judge Bork's nomination on these matters.

As Chief Rehnquist wrote back in 1958 in the Harvard Law Record, before he was a Supreme Court Justice, it is important that the Senate know the judicial philosophy of a nominee.

In the Harvard Law Record in 1958, Chief Justice Rehnquist criticized the Senate with good cause on the nomination hearings of Justice Whitaker, where the Senate failed to make inquiries into his judicial philosophy.

We had nomination hearings last year with Justice Scalia where virtually no questions were answered. We had the nomination hearings this year with Judge Bork where questions were answered fully.

While not expecting Judge Ginsburg's hearing to be as broad as Judge Bork, because Judge Bork had so much more of a public record, still there are important questions to be addressed.

I would hope that we would act promptly and I would hope that until those hearings are held, the Senate and the American people will withhold judgment and undertake the deliberative process which this important nomination is due.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. HEFLIN. I would like to associate myself, Mr. President, with the remarks of the distinguished Senator from Pennsylvania. I think it is very important that we approach this confirmation process with an open mind. If there is any part of the function of the United States Senate that should be similar to the way a judge functions, I think it is the confirmation process.

We would have great outcries if a judge in the middle of a hearing or before the hearing started was to declare that a defendant was guilty or not guilty. The trial before a judge has a purpose. It has the purpose to let

the truth come forward, let the facts be known, let the witnesses testify, let the arguments be made, and let the discussions be made of all of the facts.

The hearing process in the confirmation of a nominee for the United States Supreme Court, in my judgment, has a purpose. If the hearing did not have a purpose, there is no point in having the hearing.

I think the hearings ought to be approached with an open mind and that we ought not jump to knee-jerk reactions.

I see the distinguished Senator from Arizona on the floor, Senator DECONCINI, and the distinguished Senator from Pennsylvania, Senator SPECTER. I think the three of us in regard to the work that has been carried on over the last several years pertaining to judicial nominations have attempted to approach our duty with an open mind, to listen to testimony, and to withhold our opinions until the conclusion of the hearing.

I realize there have to be adversaries, but I hope that the Members of the Senate, Democrats and Republicans alike, those who will support Judge Ginsburg and those who will oppose Judge Ginsburg, will endeavor to keep their voices low, endeavor to listen to the evidence and withhold their judgments until the proper time.

The proper time may vary, but I think the American people want us to be fair and want us to have the perception of fairness. The process with Judge Bork, I think, was politicized by both sides. Outside groups politicized it. I hope we can avoid this politicization in the hearing process as we begin, again.

I have already met with Judge Ginsburg. I find him to be very forthcoming in his answers. His writings are probably scarce as compared to other nominees who have been proposed for the United States Supreme Court.

Therefore, I believe that because of the scarcity of opinions and probably because of a scarcity of earlier writings, plus the fact that a little over a year ago he went through an investigation by the FBI, he went through an evaluation by the American Bar Association, and other bar groups, he had a confirmation hearing and it was noncontroversial, we find that there is preliminary work which has already been conducted by the FBI and the American Bar Association. Hopefully we can get on with this hearing as expeditiously, but as deliberately, as we possibly can, and have the hearings, if we possibly can, this year. And hopefully we can have a vote in the committee before the Senate adjourns.

I would like to pledge everything, and I pledge myself to cooperate. I do not say that we should hurry just for the sake of hurrying, but I think we can look into the background of this individual and do it very thoroughly, and we can have our hearings, and they can be very exhaustive. But, nevertheless, we can move expeditiously. I pledge my support toward that end.

Mr. DECONCINI. Will the Senator yield? Mr. President, who has the floor?

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. HEFLIN. I yield to the Senator from Arizona.

Mr. DECONCINI. I thank the Senator.

I wanted to say to the Senator from Pennsylvania that I am glad he raised the subject this afternoon. I am ready to leave town as many others are. Nobody is here trying to tell anybody what to do. But I appreciate the Senator from Pennsylvania, the Senator from Alabama, and their approach because it is exactly what I believe is necessary; that is, to address this as some of us addressed the nomination in the committee of Judge Bork that we just went through. To me that process worked.

And I think the Senator from Pennsylvania put it very well. This was not one of the better days of the Senate perhaps in the manner in which it all came out because it was politicized. I think it is important that we minimize that. I think that also goes to the administration and the White House. It does not do Judge Ginsburg any benefit, I do not think, to go around and beat the drum about how this is the handpicked candidate that is going to carry out an agenda and all of these things we are already hearing, that we are going to have another son of Bork, and all of that stuff.

This is serious. Those who already made up their minds, I respect that. But I dare say most people do not know anything about Judge Ginsburg. I sit on the Judiciary Committee where I have access to some information as the other two Senators here that have just spoken. We do not have a lot about him.

It is important that we have a deliberative process. I am looking forward to that process, and I think it will work. I do not know how it is going to come out, but I think it will work. It worked, in my judgment, with Renquist. There were 30-some votes against it, but it worked. He was approved. It worked with O'Connor and Scalia, and I think it worked with Bork. He was not approved. I believe it will work this time, and I think it will work exceptionally well if people will wait and deliberately review the record that the Senator from Alabama pointed out that we are going to do.

I join with the Senator from Alabama in pledging my efforts, and we should move expeditiously. We have to wait for the FBI and the ABA reports, which are forthcoming, and I think we can move ahead.

I thank the Senator.

Mr. EXON. Mr. President, will the Senator yield? I have a statement that I would like to make, a brief one.

Mr. President, I have listened with great interest to my distinguished colleagues from Pennsylvania, Alabama, and Arizona, and all members of the Judiciary Committee. For what it is worth, I wanted to tell them that more than any other factor—and there were many—but probably more than any other factor that brought me to the final decision that I made in opposition to Judge Bork, was when those individuals indicated that they thought Judge Bork was not the right man for the Court at the particular juncture when it was made.

I believe in this particular instance we should indeed follow the advice of these three distinguished members of the Judiciary Committee, and keep an open mind. I pledge to them that I will. I will be very interested in the confirmation process, especially the hearings that they will conduct in an open and fair manner. I simply say that this is the time when we should stop, we should look, and we should listen, and move as expeditiously forward as we can, but make no commitments, and I have not. And I will not until I know far more about this than I know now.

I think that hoopla is not the way to start out to confirm a Justice of the Supreme Court. I was quite surprised, frankly, yesterday, Mr. President, to see the pep rally complexion, and attitude that took place when this nomination came forth. I would think and hope that the President would consider this as serious as most of us do, and it would have been far better I suggest if he had sent his nomination over in the usual fashion rather than a pep rally.

I shared the concern of many of the active supporters of Judge Bork in the unhappy episode that the Senate went through when they criticized some Members of the Senate, and some members of the Judiciary Committee who came out against Judge Bork even before the hearings began. It goes back to the point made by the distinguished Senator from Alabama, former Chief Justice of the Supreme Court of the State of Alabama, who served with distinction here. We should not prejudge these things, especially those members on the committee that has to hold the hearings.

I also noticed that as of yesterday some very prominent members of the Judiciary Committee, already before the hearings, had come out in support of Judge Ginsburg. I would only suggest that it might be well if there could be a little official understanding on the part of the members of the Judiciary Committee, that first, they should not be cheerleaders; second, they should not make determinations

before the hearing process. Otherwise, I think it hurts the hearing process, and those of us who do not serve on the Judiciary Committee lean very heavily, I might say, for the counsel and advice of the members on that committee that we have tremendous respect for. Let us stop, look, and listen, and let us move as far as we can but judiciously.

Mr. SPECTER. Mr. President, will the Senator from Alabama yield for a question by this Senator?

The ACTING PRESIDENT pro tempore. The time of the Senator from Alabama has elapsed.

Mr. HEFLIN. I yield the floor.

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, very briefly, I think the RECORD should note that there was no prearrangement between the distinguished Senator from Alabama and this Senator on our comments. I took the floor and intended to speak, and the Senator from Alabama, Senator HEFLIN, was commenting about the farm issue, and happened to be on the floor. Senator DECONCINI, who just left the floor, authorized me to say that he was within earshot of the floor when Senator HEFLIN and I were speaking. So he came to the floor. Senator HEFLIN and Senator DECONCINI and this Senator are three undecided members of the Judiciary Committee who are withholding judgment, as Senator EXON has just indicated is the preferable practice. But I think it worthwhile to make the point that the three of us did not come to the floor in any collusive, conspiratorial manner. It is coincidental as opposed to anything else.

## WHAT DO WE KNOW ABOUT JUDGE DOUGLAS GINSBURG?

Mr. ARMSTRONG addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I am not exactly in the same situation as the Senator from Pennsylvania. I am not here by accident.

I came over to the floor because I wanted to make a comment about the nomination of Judge Ginsburg to be a member of the U.S. Supreme Court. But I am glad I happened to come at this particular moment because I enjoyed listening to the discussion between the Senators from Pennsylvania, Nebraska, Alabama, and our colleague from Arizona, Mr. DECONCINI. I was especially reassured by the thoughtful and indeed the exemplary discussion which they gave us of the process by which they think this nomination should be considered.

My own conviction, and I yield to their expertise, is very similar. In my opinion it would be a pity if this were permitted to drag out for an extended period of time. I think there is no need to have 30, or 40, or 50, or 60 days of delay before we start the hearing.

I think it would be unfortunate, particularly in light of the experience we have just had with Judge Bork, if this matter became highly polarized. In fact, it seems to me, without trying to go back and replow that ground or assess who was right or who was wrong, that every Senator and, indeed, every thoughtful person in the country who is interested in this matter, ought to deliberately try to lower their voices a little more, to listen a little more intently, and to be a little more charitable in their thoughts, and particularly in their public characterizations of the people involved.

I say that as one who was disappointed in the outcome when the confirmation of Judge Bork was voted on by the Senate. But I say to all Senators that this is a moment when, for the sake of the system, we ought to be more thoughtful and less confrontational.

I am predisposed to be in favor of Judge Ginsburg, not because I know him, but because I start with the assumption that if the President of the United States has sent his name to us, I ought to be for him, unless there is some reason to be against him.

It is not because this is President Reagan and Judge Ginsburg. This is the attitude, basically, that I have toward all Presidential appointments, particularly in the case of those who serve at the pleasure of the President. I believe that Mr. Reagan—or his predecessor, Mr. Carter, or Mr. Ford, or Mr. Nixon, or whomever—is entitled to wide latitude. I do not think a President is entitled to so much latitude in the case of the Trade Representative, for example, or the Secretary of Labor, and certainly not as much in the case of a Justice of the Supreme Court of the United States, a lifetime appointment. Senators then have a greater duty to exercise independent judgment. Nonetheless, the fact that he has been sent here by the President does carry a lot of weight with me, and that would be true whether the President was a Republican or a Democrat.

We should start not with the presumption of confrontation, but with the presumption that we will try to get along with the President and try to confirm his nomination.

Having said that, I intend to reserve my decision until I have had a chance to get acquainted with Judge Ginsburg and know more about his record. What I have seen thus far impresses me.

Mr. President, yesterday afternoon, President Reagan announced that he will nominate Judge Douglas H. Ginsburg to be an Associate Justice of the U.S. Supreme Court. Judge Ginsburg now sits on the U.S. Court of Appeals for the District of Columbia circuit.

Most of us do not know Judge Ginsburg personally, and we are only now becoming fully aware of his many professional accomplishments. During the next few weeks he will become much better known to Senators, and to the country at large. However, we already know a great number of things about Douglas Ginsburg.

First, we know that Douglas Ginsburg's legal career has been quite remarkable. He has excelled as a student, practitioner, teacher, Government official, and judge.

He was the valedictorian of his class at Cornell, 1970, and a member of Phi Kappa Phi Honor Society.

He took a law degree from the University of Chicago Law School, 1974, where he was the article and book review editor of the law review and was elected to the Order of the Coif.

He clerked with Judge Carl McGowan of the D.C. circuit. He clerked with Justice Thurgood Marshall of the Supreme Court. From 1975 through 1983 he taught at Harvard Law School. His teaching responsibilities included subjects such as antitrust, labor, banking, and corporations. During this time he served as a legal consultant to business and industry.

In 1983 Douglas Ginsburg became a Deputy Assistant Attorney General in the U.S. Department of Justice.

He then moved to the Office of Management and Budget.

In 1985 and 1986 Douglas Ginsburg was the Assistant Attorney General in the Antitrust Division.

And in 1986 Douglas Ginsburg was confirmed to the U.S. Court of Appeals for the District of Columbia circuit.

Second, we know that Douglas Ginsburg has twice been confirmed unanimously by this Senate. On each occasion he was highly praised, and unanimously confirmed: On July 17, 1985, the Senate received his nomination to be an Assistant Attorney General. Following a hearing, the Senate confirmed him by voice vote on July 29. On September 23, 1986, the Senate received his nomination to the D.C. circuit. Following a hearing, the Senate confirmed him to that distinguished bench by voice vote on October 8.

However, even more significant as a preliminary gauge of the man than his résumé, which is impressive, and his record, is what has been said about him at the very outset by people who know him.

It happened that when Judge Bork came before the Senate, I had met him, I had some acquaintance with his record, and I was in a position to have an opinion of him the first time.

I am very much impressed by what some of our colleagues have said about

Judge Ginsburg, not only since he has been nominated but on prior occasions.

At the hearing for Douglas Ginsburg's elevation to the circuit court on October 1, 1986, Senator KENNEDY said:

Mr. Chairman, I want to commend to the Judiciary Committee Mr. Ginsburg for the important position of service on the Court of Appeals. He is no stranger to this committee. His qualifications have been reviewed by this committee and he has been approved by the U.S. Senate in the past when he was going for the responsible job as Assistant Attorney General on antitrust matters.

Mr. Ginsburg comes now before this committee as someone who has achieved a very exemplary record in his academic life. He has served as a clerk not only in the circuit court but also in the Supreme Court under Thurgood Marshall. He has taught with distinction at Harvard Law School, where the areas which he focused on were Government regulation and antitrust policy and also on first amendment issues and questions.

His colleagues had a very high regard for both his teaching and for his contributions in terms of these subject matters. He has an insightful mind to deal with complex and involved fact situations and to be able to dissect particular legal issues and questions with clarity and with a sense of compassion and with an understanding of the law.

I think all of us on the committee understand that that circuit court has very special responsibilities in a wide range of different public policy questions. I believe that, even though Mr. Ginsburg, in serving in the Justice Department has differed with some of those in the Congress on some of the complexities of antitrust laws. I have found him and I know that other members of the Judiciary Committee and the Congress have found him to be open minded, to be willing to consider views which he has not himself held.

I think we are fortunate to have this nominee for this extremely important position and, as I supported his nomination before, I would hope that we would act and act expeditiously to assure that he can join his colleagues on the circuit court.

Senator KERRY in a prepared statement said:

Mr. Chairman, I strongly support the nomination of Douglas Ginsburg to be a Judge of the United States Court of Appeals for the District of Columbia Circuit.

I commend the President for making this nomination. It is no secret that questions have been raised regarding the qualifications of some of the president's nominees to the federal bench. In this case, however, there can be no such questions.

Douglas Ginsburg brings the highest possible degree of qualifications to become a member of the federal judiciary. And he has the additional virture of being a former resident of the state of Massachusetts.

Douglas Ginsburg has a record of academic and legal distinction. He is a graduate of Cornell University, and of the University of Chicago Law School, where he received numerous honors and awards. He clerked from 1973-74 for Judge Carl McGowan on the U.S. Court of Appeals for the D.C. Circuit, the same court where he now joins Judge McGowan as a colleague. He also clerked for 1974-75 on the United States Supreme Court for Justice Thurgood Marshall. So he clearly cannot be accused of having a bias against the "liberal" viewpoint on the Court.

From 1977 to 1983, Douglas Ginsburg served with distinction as Professor of Law at Harvard Law School. I know that he commands the greatest respect from our mutual friends at Harvard such as Alan Dershowitz and Larry Tribe. Alan has indicated to me that he regards Doug Ginsburg as a legal scholar of the highest order—non-ideological, non-polemical, and the best possible nomination that the President could make for the federal judiciary.

Mr. Ginsburg also served ably in the office of Management and Budget during 1954-85 as an Administrator, Since September 1985, he has served as Assistant Attorney General for the Anti-Trust Division, where he has been involved with criminal and civil law enforcement, as well as participation on behalf of the Department of Justice in the rulemaking proceedings of all major Federal agencies.

Mr. Chairman, there could be no more highly qualified candidate for a judgeship on the U.S. Court of Appeals for the D.C. Circuit than Douglas Ginsburg. On that court, he will join the ranks of such eminent judges and senior judges as David L. Bazelon, J. Skelly Wright, Abner J. Mikva, Patricia M. Wald, and Robert H. Bork.

Yesterday on this floor, the Senator from Texas [Mr. GRAMM] said:

I know Judge Doug Ginsburg well. I am familiar with his record. I have worked with him. * * * I strongly support his nomination. I know him so well, I support him so strongly, that I do not have to listen to his critics to know that his appointment today by the President fulfilled a promise that Ronald Reagan made when the Senate rejected Judge Bork. And that promise was that he would come back with the appointment of a conservative, of a conservative who shared his view and the view of the American people that judges should interpret the law and not make it.

Judge Ginsburg has, therefore, received the endorsement of our colleagues, Democrat and Republican, liberal and conservative.

Mr. President, I think the point which our colleague from Texas, Senator GRAMM, has made is thoughtful and important.

I am not eager to get into the technicalities and complexities of the fine points of the law, although, during the course of the debate on Judge Bork, I must say that I learned a great deal about the 9th, 4th, and 14th amendments. But I do have a sort of general layman's-businessman's view that what we want on our courts, especially the Supreme Court, are the kinds of judges who will seek to understand, first, what the Constitution meant in the minds and in the eyes of those who wrote it; and then, second, will try to determine what previous courts have said; and, third, will try to interpret the precedents and the Constitution in the light of congressional intent.

I say the latter very cautiously, because often it is difficult to tell what Congress intends when it enacts a particular statute—if, in fact, Congress has any particular intent when it does so. I think that is the benchmark of a good judge.

I am not sure that I am comfortable with having that viewpoint characterized as conservative or liberal. I think it is a question of whether or not a judge sees himself as a person of judicial restraint rather than activism. I do not say that makes a man conservative or liberal. I like the notion expressed by some of our colleagues that judge Ginsburg is openminded, is willing to entertain views different from his own. I like the idea that has been expressed by some that he is a person who is restrained in his interpretation of the Constitution.

Third, we know the Supreme Court is operating short handed. The case for prompt action on the Ginsburg nomination was set out by the President:

When Justice Powell announced his retirement four months ago, he made it plain that he believed it would be unfair to the parties with cases before the Supreme Court, and unfair to the parties with cases before the Supreme Court, and unfair to the remaining members of the Court, to be left without nine full-time justices. * * *

Since June 1987, when Justice Powell resigned, the work of the Supreme Court has grown even more burdensome. All during the months of July, August, and September, nearly one-third of the literally hundreds of cases that the remaining eight justices reviewed for hearing were criminal cases. Throughout this time, the empty seat on the Supreme Court has been a casualty in the fight for victims' rights in the war against crime.

During the last 25 years, the average time between nomination and the start of hearings has been less than 18 days. In fact, in the entire 200-year history of our country, since the nomination of John Jay, the average start-to-finish time for a President's appointment to confirmation or other action by the Senate has been only 24 days. * * *

There's no more important business before [the Senate Judiciary Committee] than to bring the Supreme Court up to full strength. The Senate has a duty in this regard, just as I do. So this is my call to the Senate today: Let us all resolve that the process of confirming a Supreme Court nominee will never again be distorted.

Fourth, we know that Judge Ginsburg is a young man. He is 41-years-old, making him one of the younger nominees in the Nation's history. He is not, however, the youngest.

Joseph Story and William Johnson were both nominated when they were 32 years of age. Bushrod Washington was 36 and James Iredell was 38. In more recent years, President Eisenhower nominated Potter Stewart when Stewart was age 43 and President Kennedy nominated Justice White when Byron White was age 44.

William O. Douglas, one of the bright, young men of the New Deal, was nominated to the Court by President Franklin Roosevelt on March 20, 1939, when Douglas was 40 years of age. At the time, Douglas was the chairman of the Securities and Ex-

change Commission, and he had been on the Commission for three years. Douglas was confirmed in 15 days.

Mr. President, we do not know everything about Douglas Ginsburg, but already we know a great deal. He is an honorable man and a distinguished public servant. His abilities have been testified to by our Senate colleagues. He is a fine lawyer. And the Senate has approved him twice.

So I am looking forward to getting to know Judge Ginsburg. I met him for the first time a couple of hours ago in an elevator, and I can report to my colleagues that he has a firm handshake and a friendly manner. I do not know if that has anything to do with his being a Justice of the Supreme Court, but it does mean this: that he is out making housecalls. He is checking in with Senators and giving them a chance to get to know him, and I think that is a good thing.

So, Mr. President, I am very pleased that the nomination is before us. I am glad the President did not delay, that he sent it to us promptly. I hope our colleagues on the Judiciary Committee will act promptly to have a hearing and give us their recommendations and that we can get on with this task. I hope it will be their feeling and my feeling, after studying the record, that we can support him. A delay would be unfortunate.

Mr. President, unless other Senators are seeking recognition, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

## EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be another, not to exceed 30 minutes morning business, and Senators may speak not to exceed 10 minutes therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## OBSERVATIONS

### THE NOMINATION OF JUDGE GINSBURG TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

Mr. BUMPERS. Mr. President, I have three or four things that I would like to mention just briefly for the record.

No. 1, the nomination of Judge Ginsburg to become Associate Justice on the Supreme Court.

I do not know anything about Judge Ginsburg. I have never heard of him until about 3 or 4 days ago and I told the press yesterday and I state again today I certainly will accord him a courtesy and right that he is entitled to and that is to be judged fairly in a fair hearing.

I do not know how he views the Constitution, but my decision on him will be based to a very large extent on whether he sees the Constitution as a living, breathing, elastic document, or whether he comes up with some kind of a crabbed interpretation which sort of limits people's God-given rights which in my opinion the Government is bound to protect.

I certainly do not want to reopen old wounds, but I disagree with people who somehow think that the whole Bork nomination process was flawed and that a precedent was set which is going to poison the well on all Supreme Court nominees in the future. I disagree strongly with that.

The President alluded to that again yesterday. I did not think it was very appropriate for the President to make a nomination and then get into a confrontational, combative position with the U.S. Senate insisting that we hold hearings immediately and quickly confirm Judge Ginsburg.

Our job is not to quickly confirm or reject any one. Our job is to give Presidential nominees a fair and impartial hearing.

I do not know in the history of the country any other time when a judge has had 30 hours on the witness stand to explain his positions, demonstrate his intellect, his compassion, his judicial temperament, all of the things which I think are important, and of the 58 Senators who voted "no" on the Bork nomination, I do not know of a single one who was influenced by anything other than what they heard in the hearings and what they gleaned from reading his decisions, his law review articles, his speeches and articles.

I do not know of a single one of those 58 Senators who were influenced by a lynch mob mentality, as it has been called, or by any kind of a multimillion dollar media campaign.

It is my guess that Judge Ginsburg will be accorded the same consideration. The result might be different. I happen to believe that most people in this body take this advice and consent role very seriously as the Founding Fathers intended.

I will reiterate for the benefit of someone who may not have heard me say this before and may not know it, but it is this: When the Founding Fathers were deciding the makeup of the Supreme Court they wanted the U.S. Senate to nominate and pick judges to the Supreme Court, and that is the way it stood for four rollcalls. There were four separate efforts made in Philadelphia in that summer of 1787 to give the President the right to nominate Supreme Court Justices, and four times it was soundly defeated and, finally, just before they went home, it was offered a fifth time, say let the President nominate and then let the Senate advise and consent to that nomination.

One of the reasons they did it was one of the framers said it will be much more difficult for a Supreme Court nominee to intrigue with many, meaning the Senate, than it would be to intrigue with one, the President.

So, Judge Ginsburg has nothing to fear. He will receive a fair hearing. He will be questioned in detail on a host of things, as he should be, and then each individual Senator will make up his mind.

Sometimes I tell my constituents. I voted for the Panama Canal Treaties and it almost cost me my job in the U.S. Senate. But I used to tell Chambers of Commerce and Rotary Clubs and all the people I spoke to: Please bear one thing in mind. No politician casts a vote just to see how many friends he can lose or how many constituents he can alienate.

The Judge Bork nomination was a very controversial one. As politicians, 100 Senators probably would like not to even have had to vote on it.

But as one Senator said, we do not get a chance to vote "present" around here on these nominations. You have to stand up and be counted and sometimes you may be accused of voting against the people's wishes but sometimes when you have heard all the evidence and you believe the country's interest is really going to be affected one way or the other, you have a solemn duty to cast a vote which you think is best for the country, though it may not be particularly popular at that moment.

People in this body when they come into the U.S. Senate and stand in front of the Vice President with their right hand in the air and left hand on the Bible, and what do they do? They solemnly swear that they will uphold, defend and protect the Constitution of the United States. That does not mean when it is popular to do it. It means you will defend, protect, and uphold the Constitution under every circumstance.

So, Mr. President, I will close on that subject by making this observation: I have criticized some of my colleagues who immediately opposed Judge Bork before he was accorded a fair and impartial hearing. Every Senator is his own man or woman here, and they can do whatever they want, but I thought it was entirely appropriate to wait until the hearing, give

Judge Bork an opportunity to be heard and hold your opinion.

I am an old trial lawyer. I tried lawsuits for 18 years before I got into politics, and I have pleaded with jury after jury after jury, please do not sit on this jury if you have any preconceived notions about my client. I do not want my client convicted before the evidence is heard.

Occasionally I would catch someone, I say to the majority leader, trying to get on a jury who I knew had his mind made up. He wanted to get on it because he had a preconceived idea.

So, some of us have said to a lot of Senators around here do not prejudge Judge Ginsburg, give him a fair, impartial hearing and find out what kind of a man he is and what he stands for and what he believes, how knowledgeable he is about the law and how he views the Constitution and people's God-given rights.

There are a lot of rights not in the Constitution that God gave us and we take them for granted, but occasionally somebody wants to take one of those rights away.

One of my problems with Judge Bork was he would allow those rights to be taken away unless the state had granted them. I do not like to think that I am so subservient to the state that I do not have a right to exist, to marry, to procreate, to raise my children as I choose. Just because the Constitution does not say I have that right does not mean I do not have that right.

I thought Judge Bork's interpretation of the Constitution was too narrow. It is just as simple as that.

I want to close on that particular subject and just mention briefly three others. I do not see any difference. As I say I think Senators ought not to prejudge a nominee by saying "I am against him" before he has a hearing. But having said that, I also want to point out I do not think Senators ought to say "I am for him" before he has had a hearing either.

Why is it so bad for someone to say "I am against him" before a hearing and for someone to jump up and say "I am for him; he is a distinguished man; let's hurry up and get the show on the road and get him confirmed" before you heard anything about or know anything about him? To me that is just as bad.

Mr. President, I was amazed at the combativeness of the President's statement yesterday in nominating Judge Ginsburg. It was as though he would rather fight than switch, as they say. I thought it was rather confrontational and combative. I do not understand why the President, who wants Judge Ginsburg confirmed so badly, would start off with that sort of an attitude.

THE INF TREATY

The President does not take advice from me, but I would give him this suggestion. If he wants to influence the U.S. Senate for good, I will tell you how he can do it. Apparently, Foreign Minister Shevardnadze is here to conclude the INF Treaty and my own view right now is that I will probably vote for the INF Treaty. I am not going to commit myself on that before I see it, any more than I am going to commit myself for Judge Ginsburg before I hear him out. But it would be difficult for me right now to envision any kind of a logical reason to vote against an INF Treaty which requires the Soviet Union to remove 1,600 warheads from Western Europe and the United States to remove 400. Those 4-for-1 deals sound pretty good to me.

But, strangely, of the 54 Senators on this side of the aisle, Democrats, I will make you a prediction: That the President will probably get 50 Democrats to vote with him on that treaty and his problem in finding the other 17 is in his party. If the President wants to use his considerable persuasive powers, he probably ought to be directing it at a number of people in the Republican Party who sit on the other side of the aisle because that is where I hear all the criticism.

I watched the Republican debate the other night and I must say I was utterly shocked that, of the six Republican candidates, only one, Vice President BUSH, stood up and defended a treaty that gives the United States a 4-to-1 advantage.

Senator DOLE, I thought, probably handled himself very well in that, too. He said well, he had not seen the treaty. He wanted to reserve judgment on it. I do not see anything very much wrong with that. But the other four candidates—why, you would have thought the Russians were going to come up the Potomac River and get us, if that treaty were ratified. So there is a place where the President can spend some good time with the members of his own party, convincing them this is going to be good for the national security interests of the United States.

THE D-5

In that connection, Mr. President, a third item, but relative to arms control. Two weeks ago I read in the Washington Post that the Navy was getting ready to test the Trident 2 missile called, in military parlance, the D-5. They were going to test it with 12 warheads.

I am not going to belabor the point or deliver a sermonette on the rather arcane and complicated questions about nuclear weaponry except to say this: Under the SALT II Treaty and accept arms controls standards right now, each side has a right to consider every weapon the other side has as carrying the maximum number of warheads that that missile has ever been tested with.

Now, if the Navy were planning to put 12 warheads on that D-5 submarine-launched missile to test it with 12 warheads would make a lot of sense. But the Navy does not intend to do that; at least not for the foreseeable future. So the question is: Here we are, sitting down with the Soviet Union and saying we want to limit the number of warheads to 6,000 on both sides. That is about a 50-percent cut. Out here we are testing the D-5 missile with 12 warheads when we probably are going to put 8 on it. How are you going to convince the Soviet Union that all those hundreds of D-5 missiles on those submarines only have 8 warheads when we have tested them with 12? They are just creating problems for themselves, the administration is. I am not going to belabor that except to say it is my firm belief that the overwhelming number of people who deal with strategic weaponry in the Pentagon and in the State Department, including the Arms Control and Disarmament Agency, are very much opposed to testing that missile with 12 warheads.

It makes you say: Who on Earth is running the show? If everybody is against it and they agree with me that it does not make any sense strategically or militarily and certainly makes no sense from an arms control standpoint, why on God's green Earth are they doing it?

So, Mr. President, this afternoon I have a letter here that I will send to the President of the United States, signed by 40 U.S. Senators, pleading with him to delay testing that missile with 12 warheads because it is against our interests. I hope the President will at least take the time to read the logic of the letter that 40 Senators have signed, and many more, I think, would have signed if we could have gotten to them with it.

THE BUDGET

Finally, Mr. President, on the matter of the budget, I will just be very brief about this. We labored and groaned and moaned around here for months, trying to come up with $23 billion in tax increases and spending cuts; $23 billion, about half and half. And we finally reached that figure just about the time the stock market went into a nosedive. Do you know how much money was lost on the stock markets of this country in a 2-week period? One trillion dollars.

It is my guess that the revenue projections of both the Congressional Budget Office and the Office of Management and Budget about what revenues are going to be next year are already obsolete. You cannot have people losing a trillion dollars in the stock market in 2 weeks and the U.S. Treasury not pay a very heavy price in lost taxes.

In short, it is my guess that if $23 billion is the best we can do, the deficit will actually rise next year, not go down. So I am pleading with all of those people who are in these negotiations, I do not know who they all are, I am pleading with them to bring a package to the U.S. Senate that not only will at least double that $23 billion, but do it in a way that is fair to the American people. Everybody knows we are in trouble. There is not any point in playing the charades we have been playing for the last 7 years, acting like you can keep cutting taxes, raising spending, and balance the budget. I never believed it in the first place.

I hope they will come back here with a package. I will tell you something. Some things I never thought I would vote for that I will seriously consider voting for now. I never did want to vote for an import fee, but a $5 oil import fee would serve two purposes. It will raise $5 billion to reduce the deficit. It will also cut down on the consumption of petroleum. That is the fastest way in the world to get the trade deficit down, to stop importing such oil. You get a double whammy effect. If you can put some progressivity into a gasoline tax, something I said I would never vote for, so that people like those in my State who are low- and middle-income wage earners can get a rebate for the gasoline tax, I will vote for that.

I do not want to vote for any of these things but I do not want my children to die poor either, and that is where we are headed.

I may vote for a proposal by the Senator from South Carolina [Mr. HOLLINGS] to freeze all spending. In 1982 when it was clear that supplyside economics really was voodoo economics and the deficit was soaring out of sight, Senator HOLLINGS and I and several others tried to do it in 1982. We got 18 votes.

We came back in 1983, and I think maybe we got 22 votes. We came back in 1984 and finally got 35 or 38 votes and would have won except the President sent all of his best lobbyists over here to resist it.

I do not know what all I will vote for—almost anything, popular or unpopular, that will get this deficit under control which is causing so much mischief and grief in this country.

Finally, Mr. President, I do not know that I would be given the opportunity to do this on the reconciliation bill, but, you know, right now the top rate for 1987 on personal income tax is 38 percent. There are five brackets. If instead of cutting the rate next year to 33 percent and the next year to 28 percent, if you left that rate—and I speak for myself; I do not think 38 percent is too much for people like us making $90,000 a year, all indoor work in a beautiful setting with no heavy lifting—I do not think it is too much to ask this crowd, or the rest of America in our category, to continue paying that same rate for 3 more years because that would reduce the deficit by $50 billion.

There was a lot of concern around here that you cannot do that. We passed the tax bill last year and we cannot break faith with the American people now, they are expecting it, and so on.

I will tell you what the American people expect. They expect Members of the U.S. Senate to save this country and to do what they have to do to do it. As long as the sacrifices are fair and across the board, I promise you they are crazy to accept it, things that they would not have accepted before, because they have this keen sense of apprehension about what is going on in this country.

So, Mr. President, I am just stating these things, I guess, for the history books. I do not really expect the negotiators to come back in here and propose to leave that rate like it is, even though I think it is a modest thing. The 38-percent rate would affect people who make over $67,000 and this proposal would be beneficial to people who make under $44,000 a year in this country, and that is about 70 percent of the folks, maybe more. Leave the people in $44,000 to $67,000 just about where they are, and the people who make above $67,000 would be paying that 38 percent rate, but they would be doing a fine thing to get this deficit under control.

I am probably about the only one in the Senate who has even suggested such a thing. I know a lot of the members of the Finance Committee are opposed to that concept.

But I am telling you, we are in a new ball game now, and business as usual "ain't" going to get it done. If you send the message to Wall Street that $23 billion is all the U.S. Congress can eke out and we are not really going to reduce the deficit next year, as the old saying goes, you "ain't seen nothing yet."

Mr. BYRD. Mr. President, will the Senator yield?

Mr. BUMPERS. I am happy to yield.

Mr. BYRD. The Senator was a distinguished trial lawyer for 18 years. I can just envision Senator BUMPERS—then private citizen DALE BUMPERS, Esq., standing up before that jury, using his very considerable persuasive talents as he argues his case.

I can also understand the wisdom of what he was just saying. Who knows, one of those jurors may have had his mind made up that Senator BUMPERS' client was innocent. It might be brought out during the trial that Senator BUMPERS' client was a horse thief and Senator BUMPERS may not have been told that.

Well, now, Judge Ginsburg is not going to be found a horse thief. We know that. But it seems to me that, just as it is impolitic before the hearings and unfair before the hearings to say, "I'm against this man. I'm not going to be for him. I'm going to close my eyes and my ears to anything he says in those hearings. Doesn't make any difference what he says, I am against him." It is just as unreasonable to stand up here before we know what he stands for or before the hearings and say, "I'm for him. I'm for him."

That is not going to hasten the day of his confirmation by 1 hour. And why not, on both sides of this question, just lower our voices, stop raking over old ashes, chewing over old bones, and looking backward. Let us not engage ourselves in this big push to push for a quick vote on Ginsburg when he is entitled to be heard. He ought to be given a fair hearing. I am sure that Senator BIDEN and the Judiciary Committee will give him a fair hearing.

But, as Senator BUMPERS has so well stated here, Senators have a responsibility under the Constitution—and to God—to live up to the oaths that we all freely swore when we entered upon this office. We do it everytime we get reelected and are sworn in for a new term. We owe the country, we owe Judge Ginsburg, and we owe this Senate a fair judgment on this nomination or any other nomination.

And may I add that this Senate is not going to be stampeded. The White House did a great deal to politicize Judge Bork's nomination. It was not all done at the other end of the avenue; there was a lot of it done here. But there is no point in going over the past.

I hope, however, that the President will for one time, check himself a little before he speaks, and stop bashing the Congress, bashing the Judiciary Committee, and bashing Senators.

We have our responsibility. He has performed his. He has made his nomination. Nobody can do that for him. He has a perfect right to nominate a conservative. He has a perfect right to make his judgment on the basis, to a considerable degree, of that person's philosophy. He has done his part in the nomination process. Now it is up to the Senate. Only the President can nominate. But both the President and the Senate appoint, in a way, because the President appoints, with the advice and consent of the Senate.

So now the issue is in the court of the Senate. I do not believe the people want to perceive that this Senate is being stampeded to put its stamp of approval on Judge Ginsburg or anybody else. This is part of the constitutional process. And this year, we are commemorating the 200th year of that

Constitution. And those forebears who wrote that Constitution did not include those words lightly: "The President shall nominate, and by and with the advice and consent of the Senate, shall appoint Justices to the Supreme Court."

The Senate's duty was not meant to be a rubber stamp. If it had been, the Constitution would have said, "The President shall nominate and appoint." So our forebears did not write those words in for nothing, to be meaningless baggage.

And we Senators shirk our responsibilities if we take the position, "Well, it is my President. He is President of my party. I am going to be for his nominee." I have voted against nominees of the President of my own party.

I will say this, and I have said it before, this Senate will not be stampeded. The best way to get this nomination through without so much rancor is to let the confirmation process take its course. I am not for unduly delaying this nomination. I do not want to see an unreasonable delay. But I am also not for unduly hastening it or rushing it through. It is too important for that.

I do not know how I will vote on the nomination. As of today, I probably would vote for Judge Ginsburg; I say "probably" because I am for a conservative nominee to sit on this Court.

But the President has enough on his plate, on his platter, to keep him busy. He was nice to send Howard Baker up to consult with Senators about the nominees. He showed us a list of potential nominees. He did not pay any attention to our recommendations on Mr. Bork, and so they came back this time. And I appreciate that and I praise the President for consulting with us on this occasion and respect him and Howard Baker and all those who participated.

But the President has his role to play and we have ours. And no President, Democrat or Republican, is going to stampede this Senate into acting with undue haste on a nomination as long as I am the majority leader. And I say the same thing with reference to ourselves. I am not for delaying for the sake of delay. I do not see any evidence of delay. We just heard of the nomination on yesterday.

So I hope that the White House will restrain its collective tongue on this matter. It will go a long way toward keeping down emotions and charges and countercharges and incriminations and recriminations, and it will certainly expedite the whole process if the White House will try to exercise just a little restraint—just one time, just once—to restrain itself from lashing out and bashing the Congress—the favorite whipping boy now for 7 years. You know you can overdo a thing after a while.

## UNANIMOUS-CONSENT AGREEMENT—ENERGY AND WATER APPROPRIATIONS

Mr. BYRD. Mr. President, earlier today I stated that it would by my plan to move to take up the energy and water appropriations bill. I anticipated that there would be objections to my going to that bill. I further anticipated that I would move to take it up. That being a debatable motion, I anticipated that I would have to offer a cloture motion which would mature on Tuesday of next week, if the Senate is in on Monday.

I am told now, I believe by Senators who had planned to debate the motion to proceed at some length, that they have other plans, and I would be very pleased before I proceed to move to take up that bill to hear what they might propose.

Mr. President, with the intention of asking consent to go to that bill, and that failing—the intention to move to take it up—I would be happy first to hear what other Senators would suggest.

Mr. HECHT and Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BYRD. Mr. President, I do not yield the floor. I yield first of all to Mr. ADAMS briefly, and then I will yield to Mr. HECHT.

Mr. ADAMS. I thank the majority leader.

Mr. Leader, we appreciate the fact that if we were to speak at great length on the motion to proceed that a cloture motion would be filed and a great deal of time of the Members would be taken up today, and during the course of Tuesday and on into Wednesday with that. We know there are many things before the Senate at this time. Therefore, we would like to propose that we have a unanimous-consent agreement that would enable the leader to call up the bill at any time after Wednesday the beginning of business, and we would not filibuster the motion to proceed but would talk and make our remarks on substance at the time that the bill was being heard.

I did want to make it clear to the leader, and I am sure it is clear to all others, that we have a great many substantive concerns about the bill but we do not think it would be proper to take the time of all Members on the motion to proceed. Therefore, if we can agree upon granting that power to the majority leader by unanimous consent, this Senator and I conferred with my other colleagues, they may wish to speak for themselves, we would not make extended remarks on the motion to proceed and therefore cloture motion on the motion to proceed would not be necessary.

Mr. REID. Would the majority leader yield?

Mr. ADAMS. I thank the majority leader.

Mr. BYRD. I thank the distinguished Senator from Washington for his help and suggestion. If the distinguished Senator from Nevada would allow me to yield to Mr. HECHT as I promised I would do, then I would yield to the Senator.

Mr. HECHT. I thank the distinguished majority leader.

Reserving the right to object under this agreement we will proceed to the energy and water appropriations bill with the consideration of amendments allowed and a full discussion on the bill's merits in order. I have some serious concerns about the nuclear waste issue, and fully intend to engage in that discussion. If that is the case, then I have no objection to proceeding to this bill.

I thank the distinguished majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

I yield to the distinguished Senator from Nevada, Mr. REID.

Mr. REID. I thank the distinguished majority leader for yielding.

I concur in the remarks of the Senator from Washington and agree that the proper time to proceed on this would be on Wednesday or perhaps whatever time the majority leader decides to call up this matter when we can deal with the substantive aspects of this bill.

Mr. BYRD. I thank the distinguished Senator.

I had earlier gotten consent with the approval of the Republican leader that I be authorized, after consultation with the Republican leader or his designee, at any time, to take up the energy, water appropriation bill. I vitiated that order by unanimous consent upon having been reminded by the distinguished Senator from Washington that he had written a letter to me asking to be notified before any order was entered having anything to do with that bill. I inadvertently overlooked that letter, or had forgotten, but whatever it was, I felt duty bound to try to get the order vitiated. I did that.

Now I will have to come back to the distinguished Republican leader and see if it will be agreeable that I propose the same request to go to the energy, water appropiation bill at any time, after consultation with the distinguished Republican leader or his designee, with the understanding that it would not be before Wednesday as the distinguished Senator from Washington has suggested.

Mr. DOLE. If the majority leader will yield, I have no objection to that. In fact, I will give the majority leader some additional good news. I would like to give the same consent to the Child Abuse Prevention Treatment

Act, Calendar No. 385; Price-Anderson, and there is some dispute over which committee; the VA home loan guarantee program, which is Calendar No. 387; Calendar No. 306, Railway Safety Act, and we are about to get an agreement on Calendar No. 256, the independent counsel.

So in addition to the request made by the majority leader, I am willing and I can give him consent now after consultation with the Republican leader to take up any of those just mentioned.

Mr. BYRD. Mr. President, I make that request.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. BYRD. So that did include the energy-water appropriation bill?

The ACTING PRESIDENT pro tempore. Yes.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader. I thank the Senator from Washington and the two Senators from Nevada.

I shall propose a time agreement that has been cleared on both sides, I believe. I propose it while the distinguished Republican leader is on the floor.

## UNANIMOUS-CONSENT AGREEMENT—INDEPENDENT COUNSEL LEGISLATION

Mr. BYRD. Mr. President, I ask unanimous consent that the majority leader may at any time proceed to the consideration of S. 1293, a bill to amend the Ethics In Government Act, to provide a continuing authorization for the independent counsel. The majority leader may go at any time to that after consulation with the minority leader or his designee but with the further understanding it will not be before Tuesday next, and that the agreement on the bill as to time be as follows:

One and a half hours equally divided on the bill, to be equally divided between and controlled by Mr. LEVIN and Mr. COHEN;

Provided, further, that there be 20 minutes equally divided on an amendment by Mr. METZENBAUM to amend the independent counsel jurisdiction to include substantially related matters of the independent counsel or if the Attorney General requests such amendment;

Provided further, there be 20 minutes equally divided on an amendment by Mr. METZENBAUM to permit a majority of the majority party members or a majority of the minority party members of the Judiciary Committee to request that the Attorney General apply to the Court to expand an independent counsel investigation;

Ordered, further, that there be 20 minutes equally divided on an amendment by Mr. METZENBAUM to clarify that the documents the Attorney General must produce to Congress include staff memoranda and that the provision applies to any case closed since the law was first enacted;

Provided further that there be 1 hour equally divided on an amendment by Mr. HATCH to extend the current law for 2 years, and that there be a 1-hour time limitation on an amendment by Mr. ARMSTRONG to include Members of Congress;

That no other amendments be in order;

That there be 10 minutes equally divided on a Levin-Cohen amendment making minor modifications to the committee-reported substitute and 10 minutes on a debatable motion to appeal points of order if submitted by the chair;

That there be no motion to recommit with or without instructions;

Provided, further, Mr. President, that after third reading the Senate go without further intervening motion or action of any kind to call up the House companion bill, H.R. 2939, and without any further debate or any intervening action to substitute the text of S. 1293, as amended, for the text of the House bill;

And that the vote then occur on the House bill as amended without further debate or intervening action;

And that there be no time to debate then on the motion to reconsider which I think is the norm in any event in an agreement of this kind.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The text of the agreement follows:

*Ordered*, That the majority leader, after consultation with the Republican leader or his designee, be authorized, but not before Tuesday, November 3, 1987, to proceed to the consideration of S. 1293, a bill to amend the Ethics in Government Act of 1978 to provide a continuing authorization for independent counsel, and that no amendments be in order except the following:

Metzenbaum: To amend the independent counsel's jurisdiction to include substantially related matters if the Independent Counsel or the Attorney General requests such an amendment, 20 minutes, equally divided;

Metzenbaum: To permit a majority of the majority party members or a majority of the minority party members of the Judiciary Committee to request that the Attorney General apply to the Court to expand an independent counsel investigation, 20 minutes, equally divided;

Metzenbaum: To clarify that the documents that the Attorney General must produce to Congress include staff memoranda and that the provision applies to any case closed since the law was first enacted, 20 minutes, equally divided;

Hatch: To extend the current law for 2 years, 1 hour, equally divided;

Armstrong: To include Members of Congress, 1 hour, equally divided;

Levin/Cohen: Making minor modifications to the committee reported substitute.

*Ordered further*, That there be 1½ hours on the bill, to be equally divided and controlled by the Senator from Michigan [Mr. LEVIN] and the Senator from Maine [Mr. COHEN].

*Ordered further*, That there be 10 minutes debate on any debatable motion, appeal, or point of order, if submitted by the Chair.

*Ordered further*, that no motions to recommit, with or without instructions, be in order.

*Ordered further*, That after third reading, the Senate, without further intervening motion or action of any kind, proceed to consider H.R. 2939, and without any intervening motion or action, substitute the text of S. 1293, as amended, for the text of H.R. 2939, and then immediately proceed without any further debate or intervening action, to vote on H.R. 2939.

*Ordered further*, That there be no time for debate on a motion to reconsider.

## SCHEDULE

Mr. BYRD. Mr. President, I thank the distinguished Republican leader for his assistance in securing this agreement. It is an important agreement. The Senate will not be in on Monday next. I assured the distinguished leader of that fact if we could get this agreement, as I assured other Senators on both sides of the aisle of the same.

When the Senate completes its business today, it will not come in until Tuesday next. There will not be a vote on a cloture motion, beginning Tuesday next, by virtue of the understanding that has been worked out here in the agreement that allows the majority leader, after consultation with the minority leader, to go to the energy and water appropriations bill.

Mr. President, I think the Senate is making good headway on its legislative business, and I will not have the Senate come in on Tuesday until 10 o'clock. I believe that is an election day in some State or States. I will not ask for the usual rollcall vote on a motion with respect to the Sergeant at Arms on Tuesday.

There will be rollcall votes, however, during the day because we will have up the independent counsel legislation or other legislation that day. The votes will just come as they are reached in the course of events that day.

I would suggest to Senators that they be prepared to come in reasonably early that day, to make rollcall votes that may occur on the legislation, but I will not ask for the usual early vote.

Mr. President, I yield the floor, if the distinguished Republican leader wishes to claim it.

Mr. DOLE. I thank the distinguished majority leader.

Mr. President, I just wish to indicate that with the agreement we have just reached on five measures, a couple of which may be unanimous-consent measures, the so-called must list—unless something else comes up that must be done—is getting a bit smaller.

As I understand, we may not do the agriculture bill. Cloture has been filed on energy and water. The CR, of course, will be difficult. On reconciliation there will be a time agreement.

The trade conference report—if there should be one. There is the Supreme Court nomination.

AIDS education I am prepared to take up, but I understand, in trying to reach an agreement on this side, that there is some thought that the primary elements of that package could be put in the appropriations bill. So we are continuing to check that on this side.

The high-risk notification is quite controversial. I have not discussed farm credit, but that is one we need to do this year.

Then we have Saudi arms, Contra aid, nominations for Secretary of Transportation and Secretary of Labor.

We will continue to see what we can do to expedite matters.

## UNITED STATES-SOVIET SUMMIT MEETING

Mr. DOLE. Mr. President, I have been advised that on December 7, Mr. Gorbachev will come to the United States for a summit meeting, and I would guess that that is an indication that there will be an INF accord signed by the President and Mr. Gorbachev.

As I have said before, I think it is a step in the right direction, but it should be viewed with some healthy skepticism. The last time I checked, there were still a number of issues that had not been resolved pertaining to verification, and verification is very important.

The U.S. Senate does have the responsibility, under the Constitution, to ratify treaties, and I think Members on both sides take that responsibility seriously. I do not have any idea when the treaty might be before the Senate, but it would be sometime, I assume, fairly early next year.

So I would suggest that certainly Mr. Gorbachev is welcome. I am not quite certain why 10 days ago he indicated there would not be a summit and today there is an announcement of a summit.

I also believe that most Americans would like to see an arms agreement, a reduction in nuclear weapons. But I must add that I do not find any strong feeling that the American people, regardless of party, want to do anything on faith. They do not trust the Soviet leaders, notwithstanding the new policy of glasnost. So I suggest that this is an important agreement. It really does not reduce the total nuclear weapons by much, but it is important because it is a reduction. It is one that will be looked at carefully and read carefully by everyone in this body, particularly by members of committees which have a responsibility for hearings on the treaty.

So I congratulate the President and congratulate, I guess, Mr. Gorbachev. I hope that if that agreement is signed during that visit, it will be one that we can ratify in the Senate because it is a good agreement in all respects.

## COMPLIANCE—SANDINISTA STYLE

Mr. DOLE. Mr. President, Halloween officially is not upon us until tomorrow—but we have been seeing a big masquerade in Managua since August 7. We have seen a regime that has been making war on its democratic neighbors for 7 years, masquerading as peacemaker. A regime that has been brutalizing and suppressing its own people for 7 years, masquerading as democratic.

Well, the masquerade is over.

Yesterday, the Sandinistas announced how they will respond to the requirement in the Guatemala City accord that they repeal the emergency decrees—they will ignore it. They are not going to restore civil rights to the people in Nicaragua.

Yesterday, the Sandinistas announced how they will respond to the requirement that they implement a general amnesty—they will ignore it.

Yesterday, the Sandinistas announced how they will respond to the requirement that they work out a cease-fire with the armed resistance—they will ignore it.

I cannot articulate any more clearly than the Sandinistas, themselves, how they have responded to the call that they negotiate a cease-fire with the democratic resistance. A call endorsed by every other President in Central America, including President Duarte, who has instituted negotiations with his own guerrillas; and by Oscar Arias, who has won a Nobel Prize for leading the movement for a negotiated settlement, and who said yesterday that the Sandinistas were holding up the peace process. He said that in effect. A call endorsed by Cardinal Obando, whom the Contras have already urged to serve as mediator. A call endorsed by everybody—everybody—who really wants peace and democracy in Nicaragua.

Here is how the Sandinistas respond to that call, and I am quoting their statement: "No way—nowhere—through no intermediary—at no time—will ever hold a political dialogue" with the democratic resistance.

No way, nowhere. Through no intermediary. At no time.

We hear an awful lot of excuses from an awful lot of people for outrageous Sandinista behavior.

But I wonder if anyone, anywhere, at any time can come up with an excuse for this arrogant, thumb-of-the nose toward the August 7 accord, the peace process, and the demands of the Nicaraguan people for peace with freedom.

Mr. President, since August 7, the Sandinistas, with great fanfare, have opened one newspaper—with certain "understandings" about not printing material which would undermine the so-called peace process. They have opened one radio station—but refused to allow it to broadcast any news. They have allowed serveral score people out of jail—and kept thousands locked in Sandinista slammers. They have declared a phony, partial ceasefire—and continued to import massive arms supplies from the Soviet Union and Cuba.

And, of course, Mr. Ortega will not even be in Managua on the day the Guatemala City accord is to go into full effect—because he will be in Moscow, celebrating a Communist birthday with his Kremlin mentors.

Mr. President, the masquerade is over, and I think we are going to have to make some hard choices here in the Congress again, whether we like it or not. I think the focus must now be on Daniel Ortega and the Communist Sandinista to see if they will comply with the peace process.

It is not enough to say, "Well, we have started the process, we should not do any more, the United States ought to back away."

I would hope that regardless of anyone's previously held position they would follow very carefully not only the words but the actions or inactions of those leaders in the Communist Sandinista Government.

## JUDGE GINSBURG

Mr. DOLE. Finally, Mr. President, not in response, but in connection with the statement made earlier by the majority leader, I share the majority leader's view that the Senate is not going to be stampeded into consideration of any nomination, whether it is the Supreme Court or any Cabinet or whatever. And I do believe that that is certainly understood, understood by this Senator, and I think understood by those who initiate the nominating process.

I did meet briefly with Judge Ginsburg this morning. We did discuss when the FBI check might be completed, how soon the American Bar Association might act, and things of that kind, and that will take some time, and as I understood the nominee to be an Associate Justice of the Supreme Court was meeting with the distinguished chairman of the Judiciary Committee, Senator BIDEN, at about 12:30 today. There might have been an additional discussion of that, and the judge will be visiting with the majority

leader at a very early time. So I think the process is started.

Judge Ginsburg is making what we call courtesy calls and he is discussing with Senators who have an interest any question they might want to discuss at this point.

So I do not see any hesitation at this point on the part of Congress. I hope there can be an orderly process and that the process will go forward as I feel certain that it will and that we can, wherever possible, expedite action on the nomination and perhaps complete action at a very early time.

That will depend in part on the extent of the hearing, how long it takes, how many questions, how many other witnesses may wish to appear and how to accommodate everyone's schedule.

I have also said yesterday that I just met Judge Ginsburg yesterday. While I certainly support the President's nominee, like everyone else I want to have an opportunity to find out more about Judge Ginsburg. I hope there is no rush to judgment on either side, and I do not believe there will be.

So I will just say that as far as this Senator is concerned we are prepared to cooperate with the administration for expeditious hearing of the nominee and consideration on the Senate floor.

Mr. President, I yield the floor.

## RESPONSE OF THE MAJORITY LEADER

Mr. BYRD. Mr. President, I wish to comment on two or three subject matters that have been mentioned by the distinguished Republican leader.

### APPROPRIATIONS BILL

The Senate has passed all of the appropriations bills that have been sent to the Senate by the House of Representatives with the exception of the energy and water development appropriations bill. So, out of the 10 general appropriations bills that have been sent to the Senate by the House, the Senate has passed 9 of them and is ready to go to conference. Conferees have been appointed on seven of them and there only remains the one, and the Senate will move on it next week provided Senator JOHNSTON, who is the manager of the energy-water appropriations bill, he being the chairman of the Subcommittee on Appropriations for Energy and Water, is able to take on that task here on the floor while he is working with the bipartisan deficit reduction group in both Houses and including the White House representatives, Messrs. Baker, Baker, and Miller.

In my judgment, those meetings should come first. They have the green light. They have priority, and I do not want to take Senator JOHNSTON away from those meetings until that work is done.

### THIS WEEK'S WORK

Second, I think that the Senate should be complimented on the work that it has done this week. It has passed a military construction appropriation bill; a catastrophic illness health care bill; the transportation appropriaton bill; three bills—the airport trust fund, the airline consumer protection, and the airline merger labor-protection bill. The Senate has taken on the drug testing issue, and the text of S. 1041, drug testing for operators of aircraft, railroads, and commercial motor vehicles bill. The Senate has acted upon the temporary extension of the FHA loan authority, and it has reached a time agreement on the independent counsel reauthorization bill.

I thank the distinguished Republican leader for this cooperation in helping to schedule these measures and make it possible that we could get agreements to go to them without delay, and so it is an accolade which I wish to pass around and give due credit to all concerned.

I think this has been a good demonstration of bipartisan effort in the Senate, and it shows the results, and also shows where we can go when we work together in that fashion.

### INF TREATY AND JUDGE GINSBURG

On the matter of the treaty, the INF treaty, Mr. President, I want to share the Republican leader's expressed view, as I understood it, that we give a careful look at that treaty when and if it reaches the Senate, that we do not make up our minds in advance, just as I have advocated we not make up our minds pro and con in advance on the nomination of Mr. Ginsburg. Let us give him a fair hearing and give the American people what we owe them, namely, the responsibility to fairly act on that nomination and to not act with undue haste or with overly much delay. Whatever is adequate, let us do it and nothing more and nothing less, and we will all have plenty of time to make up our minds pro and con on Judge Ginsburg after the hearings. I think if we say we are against him before we even listen to him or give him a hearing, it is like pronouncing the verdict and then having a trial. I am not in favor of that.

Of course, I cannot reign in or bridle or control any Senator here. If a Senator wants to express himself ahead of time for or against, he can do so. The perception, however, is we are being unfair, and I think rightly so, if we say we are against him before we give him a chance to be heard. I think, by the same token, it makes it appear to be a partisan political matter if we say we are for him before we hear him at the committee hearing.

Again I say I cannot control other Senators. I can only try to control myself in that respect.

### THE INF TREATY

But with regard to the treaty, I am not going to say that I am for the treaty or against it prior to its being sent to the Senate and prior to our having an opportunity to carefully examine it.

I would say that about the treaty, however, and I will be brief, and that is, that any understandings there are with regard to this treaty, we ought to write them in. The Senate can write in understandings and reservations and we ought to do that. It ought to be all out on top of the table.

We ought not to have any secret understandings. We ought to have it all written in. If it is not written into the text of the treaty, then we ought to write in an understanding, a reservation, or whatever, on the Senate floor when the resolution of ratification comes before the Senate. Our allies ought to clearly know what any understandings are. There ought to be no secret, under-the-table understandings between the American and Soviet Governments. Let everything be public.

Let us know what understandings we have with the Soviet Union and what understandings they have with us and what understandings we have with our allies. Let our allies know what is on the table and the American people know what is on the table.

We are going to have some problems with verification, and we need to resolve those problems. The American people do not want a treaty that cannot be verified and our allies do not want a treaty that cannot be verified.

I want to be satisfied with respect to the verification procedures. I want to listen to the advice and counsel of the Joint Chiefs and those who have participated in the negotiations and I also want to have good reason to believe that all understandings are known, that there is nothing secret. Nothing hidden. Nothing covered over. We go into this with our eyes open; maybe with our guard high, but with our eyes open, knowing exactly everything that was said and done, what was understood, and having evidence of it. We cannot afford to make a mistake, not on a treaty with the Soviet Union. We may have made mistakes before and it should have taught us not to repeat them.

Now when we were discussing the SALT II treaties, as I have said several times before, when the Soviets went into Afghanistan, I called President Carter and said, "I want to come over to the White House." And I went to the White House. I said, "Mr. President, we cannot get a two-thirds vote for this treaty. The Soviets have now invaded Afghanistan. It is a hopeless task. It is an act in futility if we even try." So I never called up the treaties. The Soviets are still in Afghanistan.

Mr. President, there is going to be some things said about Afghanistan when this treaty comes to the Senate floor. I do not know how much conversation the Soviets and our negotiators have had about Afghanistan. I understand they have been talking more seriously. I understand from various of our own high-ranking negotiators that the Soviets have been talking recently with some seriousness about Afghanistan.

Well, I can say one thing: There will be serious talk on this floor about Afghanistan when this treaty hits the fan, because the Soviets are still in Afghanistan. They have killed and maimed hundreds of thousands of Afghans—old and young. They have driven millions from their homes. They have left millions of homeless children, orphans, and widows. This treaty is not going to be glossed over, given a pat on the back and a quick how do you do, and approved.

The Senate does not ratify treaties. The Senate only approves the ratification of treaties. But without the Senate's approval of the ratification, the ratification cannot go forward.

The ratification occurs when the instruments are exchanged. The Senate can even approve the ratification of the treaty, yet the President is not even there bound to go through with its ratification.

But Afghanistan is going to be discussed on this Senate floor. I hope that the President and the Secretary of State understand that. I do not know how much has been discussed, in all seriousness, with the Soviet Union, but it is going to be discussed on this floor. There may be some reservations and understandings written into the resolution with respect to Afghanistan. I am not saying there will be, but I am not saying there will not be. But the sight of the horrors and the tragedies and the savagery that have been visited upon the Afghans for these 7 years has been kept hidden, for the most part, from the eyes of the world. There is going to be something said about this subject when the treaty comes up here. Our President and Secretary of State might as well know that. As I say, there may be some understandings and reservations added here regarding Afghanistan or about the mismatch in conventional forces or about chemical weapons or other matters.

Additionally, I want to call to the attention of the administration that there are two treaties that have been on the executive calendar since February 27 of this year. They were reported favorably, with a resolution of advice and consent to ratification, by Mr. PELL, chairman of the Committee on Foreign Relations. They have been just sitting on the calendar.

One is a treaty with the Union of Soviet Socialist Republics on the limitation of underground nuclear weapons tests, and the protocol thereto, the so-called Threshold Test Ban Treaty.

The other is a treaty with the Union of Soviet Socialist Republics on underground nuclear explosions for peaceful purposes, and the protocol thereto, the Peaceful Nuclear Explosions Treaty.

Mr. President, I urge the administration to get behind these treaties that it entered into, and to support on the Senate floor here the approval of the ratification of those treaties.

The President welshed on his promise. The President promised—and it is in writing—that these two treaties would be among the first orders of business for this Congress if the Congress, prior to his going to Reykjavik, would remove arms control language from the continuing appropriation resolution last year. The House withdrew the language in order to free the President's hands. We all stood united behind him. We were not Republicans or Democrats. We were all behind him at Reykjavik.

He broke his promise. He did not support these treaties. And the Foreign Relations Committee put in the verification language that he wanted. He did not support it. He insisted on those treaties being approved twice by the Senate—something I have never heard of.

Now, I do not assume that the administration will insist on the INF Treaty being approved twice by the Senate. But I am going to remind the administration of the two treaties that are on this calendar—they have been on this calendar—and to which Mr. Reagan said he would give his support, in writing—in writing. He has not given his support in keeping with his commitment.

We only have 54 Democrats, and not all of them are for the treaties. But we Democrats cannot provide 67 votes. We only have 54. Unless we have the President and the White House and Senate Republicans supporting these treaties, we cannot approve the ratification thereof.

So it might be a good way to start off if the administration, the first thing next year will say, "We will support those two treaties," in anticipation of sending up an INF Treaty. That would be a good start.

Having said that, Mr. President, I thank all Senators and I am ready to transact some business by unanimous consent.

## ORDER EXTENDING MORNING BUSINESS TO 30 MINUTES

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 30 minutes and Senators may speak therein for up to 10 minutes each. Would that be sufficient?

Mr. EVANS. That is fine, Mr. Leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington [Mr. EVANS].

(The remarks of Mr. EVANS pertaining to the introduction of legislation will be found later in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

## BLACK MONDAY

Mr. MURKOWSKI. Mr. President, a week ago this past Monday, the Nation stood on the brink of financial crisis. On that "Black Monday" we faced the spectre of financial panic, to say the least.

Since that day we have witnessed financial markets both at home and abroad in a state of great uncertainty and turmoil. Unprecedented volatility and wide fluctuations in stocks, bonds, and dollar levels evidence continued instability, fear and concern for the future. It will be quite some time before my heart will not skip a beat when I hear the words, "On Wall Street today."

There was a message in "Black Monday's" panic. I urge my colleagues to be receptive to that message. On that day, the market was ruled by fear. I submit that the fear was legitimate. It was the fear that the end had come to the economic illusion that we can pile unending deficits onto a towering national debt forever and without consequence.

Just how large is this debt, and what does it mean to America—to Americans—to our children—and theirs—and theirs?

Mr. President, I came to the U.S. Senate in 1981. During that year, I had an opportunity to buy a padlock and when I went to the hardware store, rather than buying a key padlock I bought a combination padlock.

I went home and I reflected on what combination I would set for that padlock. I recall that I had been at a budget meeting and the total debt of our Nation, in the spring of 1981, was $757 billion.

I set that padlock for 757. Since that time, every time I open that padlock, I reflect a little bit on the difference between the current level of debt and the debt at the time I purchased the padlock in 1981. Today we have accumulated a debt of $2.3 trillion.

Think of that Mr. President, $2.3 trillion increased from $757 billion in a period of about 6 years.

Well, I obviously cannot find a padlock with that many numbers on it, so I do not have to worry about that anymore.

At current spending levels, the indication is that the total debt will in-

crease $300 billion by next spring alone.

What are the implications of this debt? Well, one is the interest we must pay to service the debt. Eighteen cents on every dollar in revenues collected by the Federal Government is necessary to service the debt. What does this interest do? It does not provide any jobs. It is kind of like a horse. You know what a horse does, Mr. President; a horse eats while you and I sleep.

Reflect on it. The revenue dedicated to paying that interest generates no jobs, no additional services, no veterans' benefits, just continued growing interest on the debt. The U.S. Treasury borrows over $500 million each and every day of the year—I might add most of that debt is borrowed from foreign sources—to service our accumulated debt.

I was a banker, Mr. President, for some 24 years, and I understand the power and influence of one who holds another's debt. We are seeing foreigners come in and underwrite our debt today. What are they doing with their excess dollars? They are buying our assets.

The significance of the power and influence they are going to have on our economy is evident in the manner in which the stock market reacted. It did not just react in New York. It reacted in Hong Kong, in Tokyo, in Sydney. It is a uniform, worldwide economic crisis and we are simply a part of it. No longer can we stand alone.

Really, we have a cancer which is eating away at America today. Rising interest rates impede growth, the U.S. debt is interwoven with the trade deficit, and as a result, we have a difficulty in competing worldwide. We have insufficient dollars to infuse into business for expansion and homes in this country. This is a reality and facing reality can be very difficult; it can be painful.

However, this Nation, this Congress and this body must face the reality imposed by our budget and trade deficits. If we delay until action is easy, we are being unrealistic. We cannot limit ourselves to those measures which do not inconvenience us. We must act and we must act now.

If we fail to act, one day the panic we witnessed on "Black Monday" will be the calm before the storm. If this Nation, this Congress and this body fail to face reality, financial reality, one day we are going to pay the piper. We will lose the options that we have now if we do not move with dispatch. We will lose the ability to control our own domestic destiny, and, most importantly, other programs and principles that we cherish will be swept aside without regard to their importance to the American people or the fairness of their demise.

Mr. President, we cannot forget the obligation of the Congress to those who follow us.

Mr. President, a short time ago, George Will quoted Herb Stein, Chairman of the Council on Economic Advisers under President Nixon as saying, "Economists do not know much, and they know much more than politicians." A rather humorous quote and there is probably some truth in those words. But I believe that politicians know as well as economists the consequences of continued irresponsibility in borrowing and spending with the hope that future generations will be able to handle the debt.

The difference is that as politicians we are in a role which compels us to make decisions. I submit the stock market panic, "Black Monday," is evidence that everyone knows what economists and politicians know. I submit that the panic is evidence that there is a general belief in this country, and around the world, that the day of reckoning for our unwillingness to make hard decisions has come very close.

Mr. President, the panic is also evidence that the Senate has before it a historic window of opportunity. This week's economic summit between the President and the Congress has the potential to begin the process of reweaving the economic fiber of the Nation into a sound, durable economic system that will continue to generate opportunities for growth and prosperity. To do so, all of us must be willing to set aside political considerations in the interest of the Nation's well-being.

To do so, we must remember that we cannot use unanimous consent to make our problems disappear or create illusionary savings where none exist.

The free market, Mr. President, exists in a real world where budget savings exist only if we spend less money; a real world where the only revenues that count are those that are collected.

Over the past 5 years we have seen budget crisis after budget crisis resolved by smoke and mirrors. Last week we saw the free market analysis of our so-called problem solving. Last week on 1 day we saw a half trillion dollars of paper profits disappear.

I contend that an honest, actual reduction of our deficit with a credible plan with further future reductions would have preserved that value by preserving confidence in the economic system in which it is rooted.

Mr. President, we must go forward now. The market and the public are watching us. If we fail to act now, when the consequences of inaction have been so dramatically demonstrated, I predict even greater retribution by the hidden hand of the free market.

We are talking about $23 billion, Mr. President, as a start. That is a small amount, very small, as a percentage of the whole. In reality, it is less than 1 percent. If we cannot achieve that minimal level of 1 percent, then we can never hope to restore the confidence of the financial markets of the world.

So, Mr. President, we must do better. We must correct the policies which have led to a Federal budget wildly out of balance and an out-of-control trade deficit as well.

U.S. firms have been driven to their knees by foreign competition in an inequitable manner, Mr. President, because reciprocity does not exist. Foreign countries enjoy market access into the United States, but there is no reciprocity in that relationship, Mr. President.

We have seen in the case of contracting, architectural, and engineering firms coming into the United States from Japan and doing as much as 2 billion dollars' worth of business. On the other hand, we have yet to do any business in Japan through our own contracting firms, our architectural firms, engineering firms, and so forth.

This is the kind of thing I am talking about, Mr. President; equity in competing for foreign markets, not protectionism. At a time when foreigners are buying up American assets and firms at an unprecedented pace, it is simply time to demand fairness and equity.

We see our U.S. Navy defending the supply of oil in the Persian Gulf. For the benefit of whom? For the benefit of our allies. And their contribution to this effort, Mr. President, it is very hard to identify. We are not receiving the benefits of the oil from the Persian Gulf we are commiting our Navy to defend.

So, Mr. President, we must act now, even though it is painful; because the pain we feel now will be nothing compared to the pain we shall feel when our worst fears are realized.

I think I have outlined the problem. The question is, "Who is going to lead the way?" We are talking about our economic summit meetings here on the Hill. I challenge my colleagues in this body to address the reality that we today have a very historic opportunity to take a significant step to bring our deficit under control.

As ranking minority member of the Committee on Veterans' Affairs, I know the veterans of this country are willing to support our actions to restore balance to the budget. They are willing to come forward and provide leadership by supporting a freeze on the COLA's that are due justifiably to those who gave so much to keep and maintain our freedoms.

The veterans' organizations of America; the American Legion, the Veterans of Foreign Wars, the Disabled Ameri-

can Veterans, the AMVETS, the Paralyzed Veterans of America, who in combination represent in excess of 6 million veterans; are prepared to meet now with Members of this body and with the President of the United States to announce their willingness to forgo a COLA in the benefits received by disabled and needy veterans if, Mr. President, the COLA freeze is across the board; if the freeze applys to all programs and all program recepients. Let us look at what this means. Savings are estimated to be $350 million in service-connected disability compensation, and over $97 million in pensions for needy disabled veterans.

So we are talking here, Mr. President, of a savings of about $450 million in fiscal 1988 alone. We know, Mr. President, that a freeze on the Social Security COLA would yield an additional $9 billion in savings. A freeze which includes veterans but does not include Social Security recipients frankly will not meet the test of equity as far as our veterans are concerned.

Such a freeze would deny a COLA to the many veterans disabled in the service while fighting our wars, to those who were wounded in our wars, while at the same time providing a COLA to Social Security recipients.

I think it is important to note, Mr. President, the veterans of this country are willing to sacrifice their COLA with the condition that the freeze apply universally. It must apply to everyone. If disabled veterans, needy veterans, are asked to sacrifice while nonmeans-tested Social Security recipients are excluded, I believe that this Congress, this body will respond with an exemption for veterans.

In summary, Mr. President, veterans have already sacrificed for this country. They have given much through their service. Those injured in the performance of their duty can never possibly be repaid. But, as I have repeated time and time again, they have expressed their willingness to make a sacrifice again if the sacrifice is universal.

Mr. President, make no mistake about it. We are not speaking of cutting existing benefits, only freezing benefits for 1 year at a current level so we can address the economic plight of this country. Our veterans recognize that their programs, if they are to continue, must be based on a healthy economy.

The significance of their willingness is evident, Mr. President. The veterans of this country are willing to step forward and say they will take a freeze on COLA's. They say they stand ready again to make a sacrifice.

So the message to this body, Mr. President, is evident. The message is a very simple one. Does this legislative body have the intestinal fortitude to accept the message of the veterans of this country that they are willing to accept the sacrifice if the sacrifice is universal?

In addition, there is a message to our President and our leaders that our veterans again are willing to step forward. There is also a message, Mr. President, to those recipients of Social Security in this country that they, too, must address the question of whether they are willing to accept a freeze of their COLA's as well.

I would hope that our President will have an opportunity to meet with the spokesmen for the veterans organizations of America, and to hear them enunciate their willingness to make this sacrifice.

Mr. President, the veterans organizations of America are willing to march with the Congress and the President of the United States today, and they are waiting to hear from both.

I thank the Chair.

Mr. EVANS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

## THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished acting Republican leader, Mr. EVANS, if the following calendar orders have been cleared on his side of the aisle: Calendar orders numbered 97, 137, and 230.

Mr. EVANS. Yes, Mr. President.

Mr. BYRD. We may transfer those to "Subjects on the Table."

Mr. EVANS. All three of those have been cleared on our side.

Mr. BYRD. And if we might pass or take up and pass Calendar Order No. 399 and all calendar orders through 416 inclusive.

Mr. EVANS. All of those have been cleared on this side of the aisle.

Mr. BYRD. I thank the distinguished Senator.

## ITEMS TRANSFERRED TO SUBJECTS ON THE TABLE

Mr. BYRD. Mr. President, I ask unanimous consent that the foregoing Calendar Order Nos. 97, 137, 230, be transferred to "Subjects on the Table," en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

## LEGISLATIVE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that all Calendar Orders 399 through 416 be taken up en bloc, considered en bloc, agreed to en bloc, with any amendments thereto or amendments to the preambles thereto being agreed to en bloc, and that the motion to reconsider en bloc be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The measures follow:

## NATIONAL DAY OF EXCELLENCE

The joint resolution (S.J. Res. 35) relating to the commemoration of January 28, 1988, as a "National Day of Excellence," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 35

Whereas, on January 28, 1986, the seven crew members of the space shuttle Challenger, Commander Francis R. Scobee, Pilot Michael J. Smith, Mission Specialist Ellison S. Onizuka, Mission Specialist Ronald E. McNair, Mission Specialist Judith Resnick, Payload Specialist Gregory B. Jarvis, Teacher-Observer S. Christa McAuliffe, were killed in a tragic explosion shortly after liftoff;

Whereas each of the crew members of the Challenger was a true American hero who represented the best and the brightest that our Nation has to offer;

Whereas the crew of the Challenger gave their lives while striving for an excellence of technology, of goal, and of personal achievement which fills all Americans with a sense of pride in their fellow human beings and countrymen;

Whereas the most appropriate tribute we could pay the crew of the Challenger is a national day when Americans would re-dedicate themselves in all their endeavors to the pursuit of excellence which makes our country great;

Whereas the American spirit is most responsive to a living tribute in which all citizens can participate and be enriched by such participation; and

Whereas this is a day for which our national character cries out: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That January 28, 1988, is designated as a "National Day of Excellence". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe such a day—

(1) by resolving that in the course of their regular activities they will pursue the spirit of excellence represented by the crew of the space shuttle Challenger; and

(2) with appropriate ceremonies and activities.

## NATIONAL FAMILY WEEK

The joint resolution (S.J. Res. 66) to designate the week of November 22, 1987, through November 28, 1987, as "National Family Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S.J. RES. 66

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President is hereby authorized and requested to issue a proclamation designating the week of November 22, 1987, through November 28, 1987, as "National Family Week", and inviting the Governors of the several States, the chief officials of local governments, and the people of the United States to observe such week with appropriate ceremonies and activities.

## NATIONAL ADOPTION WEEK

The joint resolution (S.J. Res. 97) to designate the week beginning November 29, 1987, as "National Adoption Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 66

Whereas Thanksgiving week has been commemorated as "National Adoption Week" for the past ten years;

Whereas we in Congress recognize the essential value of belonging to a secure, loving, permanent family as every child's basic right;

Whereas approximately fifty thousand children who have special needs—school age children, children within sibling groups, children who are members of minorities, or children with physical, mental, or emotional handicaps—are now in foster care or institutions financed at public expense and are legally free for adoption;

Whereas the adoption by capable parents of these insitutionalized or foster care children into permanent, adoptive homes would insure the opportunity for their continued happiness and long-range well-being;

Whereas public and private barriers inhibiting the placement of these special needs children must be reviewed and removed where possible to assure these children's adoption;

Whereas the public and prospective parents must be informed of the availability of adoptive children;

Whereas a variety of media, agencies, adoptive parent and advocacy groups, civic and church groups, businesses, and industries will feature publicity and information to heighten community awareness of the crucial needs of waiting children; and

Whereas the recognition of Thanksgiving week as "National Adoption Week" is in the best interest of adoptable children and the public in general: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the week of November 22, 1987, through November 28, 1987, is designated "National Adoption Week", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

## NATIONAL HOME HEALTH CARE WEEK

The joint resolution (S.J. Res. 98) to designate the week of November 29, 1987, through December 5, 1987, as "National Home Health Care Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 98

Whereas organized home health care services to the elderly and disabled have existed in this country since the last quarter of the eighteenth century;

Whereas home health care, including skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, health counseling and education, and homemaker-home health aide services, is recognized as an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places emphasis on the dignity and independence of the individual receiving such services;

Whereas the Federal Government has supported home health services since the enactment of the medicare program, with the number of home health agencies providing services increasing from less than five hundred to more than five thousand; and

Whereas many private, public, and charitable organizations provide these and similar services of millions of patients each year preventing, postponing, and limiting the need for institutionalization and enabling such patients to remain independent: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress, assembled,* That the week of November 29, 1987 through December 5, 1987, is designated as "National Home Health Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

## NATIONAL PEARL HARBOR REMEMBRANCE DAY

The joint resolution (S.J. Res. 105) to designate December 7, 1987, as "National Pearl Harbor Remembrance Day," on the occasion of the anniversary of the attack on Pearl Harbor was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 105

Whereas on the morning of December 7, 1941, the Imperial Japanese Navy and Air Force launched an unprovoked surprise attack upon units of the Armed Forces of the United States stationed at Pearl Harbor, Hawaii;

Whereas over two thousand four hundred citizens of the United States were killed in action and one thousand one hundred and seventy-eight were wounded in this attack;

Whereas President Franklin Delano Roosevelt referred to the date of the attack as "a date that will live in infamy";

Whereas the attack on Pearl Harbor marked the entry of this Nation into World War II;

Whereas the people of the United States owe a tremendous debt of gratitude to all members of our Armed Forces who served at Pearl Harbor, in the Pacific Theater of World War II, and in all other theaters of action of that war; and

Whereas the veterans of World War II and all other people of the United States will commemorate December 7, 1987, in remembrance of this tragic attack on Pearl Harbor: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That December 7, 1987, the anniversary of the attack on Pearl Harbor, is designated as "National Pearl Harbor Remembrance Day" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States—

(1) to observe this solemn occasion with appropriate ceremonies and activities; and

(2) to pledge eternal vigilance and strong resolve to defend this Nation and its allies from all future aggression.

## NATIONAL STUTTERING AWARENESS WEEK

The joint resolution (S.J. Res. 125) to designate the period commencing on May 9, 1988, and ending on May 15, 1988, as "National Stuttering Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 125

Whereas stuttering occurs when the natural flow of speech is interrupted, such as with the inability to produce certain sounds, or when an initial sound, word, or phrase is repeated;

Whereas over 3,000,000 Americans, both children and adults, suffer from this handicap;

Whereas there is a tendency for stuttering to be an inherited trait which can often be traced through family genealogy;

Whereas men have been found to be four times as likely as women to have this disorder, the same male to female ratio as with some learning disorders;

Whereas it should be recognized that although there is no known cure for stuttering, there is help available, and that available help should be emphasized; and

Whereas there has been no national recognition of the condition known as stuttering, and the public and Federal government are not sufficiently aware of the frustration and anxiety felt by persons who stutter and the diminished self-respect and self-esteem which follows: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period commencing on May 9, 1988, and ending on May 15, 1988, is designated as "National Stuttering Awareness Week", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such period with appropriate ceremonies and activities.

## FREEDOM OF INFORMATION DAY

The joint resolution (S.J. Res. 126) to designate March 16, 1988, as "Freedom of Information Day," was considered, ordered to be engrossed for a

third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 126

Whereas a fundamental principle of our Government is that a well-informed citizenry can reach the important decisions that determine the present and future of the Nation;

Whereas the freedoms we cherish as Americans are fostered by free access to information;

Whereas many Americans, because they have never known any other way of life, take for granted the guarantee of free access to information that derives from the First Amendment to the Constitution of the United States;

Whereas the guarantee of free access to information should be emphasized and celebrated annually; and

Whereas March 16 is the anniversary of the birth of James Madison, one of the Founding Fathers, who recognized and supported the need to guarantee individual rights through the Bill of Rights: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That March 16, 1988, is designated as "Freedom of Information Day", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local government agencies and the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

## NATIONAL TOURISM WEEK

The joint resolution (S.J. Res. 134) to designate the week commencing on the third Sunday in May, 1988, as "National Tourism Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 134

Whereas tourism is vital to the United States, contributing to overall economic prosperity, employment, and international balance of payments;

Whereas tourism creates employment opportunities that provide wages and salaries for individuals and tax revenues for Federal, State, and local governments;

Whereas the travel and tourism sectors of the economy constitute a large industry in the United States;

Whereas tourism enhances international understanding and goodwill; and

Whereas as people throughout the world become aware of outstanding cultural and recreational resources available across the United States, travel and tourism will become an increasingly important aspect of the daily lives of people the United States: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the week commencing on the third Sunday in May, 1988, is designated as "National Tourism Week".

## NATIONAL DRUNK AND DRUGGED DRIVING AWARENESS WEEK

The joint resolution (S.J. Res. 136) to designate the week of December 13, 1987, through December 19, 1987, as "National Drunk and Drugged Driving Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 136

Whereas traffic accidents cause more violent deaths in the United States than any other cause, approximately forty-six thousand in 1986;

Whereas traffic accidents cause thousands of serious injuries in the United States each year;

Whereas about 54 per centum of drivers killed in single vehicle collisions and 39 per centum of all drivers fatally injured in 1986 had blood alcohol concentrations of .10 or above;

Whereas the United States Surgeon General has reported that life expectancy has risen for every age group over the past seventy-five years except for Americans fifteen to twenty-four years old, whose death rate, the leading cause of which is drunk driving, is higher now than it was twenty years ago;

Whereas the total societal cost of drunk driving has been estimated at more than $26,000,000,000 per year, which does not include the human suffering that can never be measured;

Whereas there are increasing reports of driving after drug use and accidents involving drivers who have used marijuana or other illegal drugs;

Whereas driving after the use of therapeutic drugs, either alone or in combination with alcohol, contrary to the advice of physician, pharmacist, or manufacturer, may create a safety hazard on the roads;

Whereas more research is needed on the effect of drugs either alone or in combination with alcohol, on driving ability and the incidence of traffic accidents;

Whereas an increased public awarness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increasing necessary research on the effect of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups, is demanding a solution to the problem of drunk and drugged driving;

Whereas the Presidential Commission on Drunk Driving, appointed to heighten public awareness and stimulate the pursuit of solutions, provided vital recommendations for remedies for the problem of drunk driving;

Whereas the National Commission Against Drunk Driving was established to assist State and local governments and the private sector to implement these recommendations;

Whereas most States have appointed task forces to examine existing drunk driving programs and make recommendations for a renewed, comprehensive approach, and in many cases their recommendations are leading to enactment of new laws, along with stricter enforcement;

Whereas the best defense against the drunk or drugged driver is the use of safety belts and consistent safety belt usage by all drivers and passengers would save as many as ten thousand lives each year;

Whereas an increase in the public awareness of the problem of drunk and drugged driving may contribute to a change in society's attitude toward the drunk or drugged driver and help to sustain current efforts to develop comprehensive solutions at the State and local levels;

Whereas the Christmas and New Year holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem;

Whereas designation of National Drunk and Drugged Driving Awarenesss Week in each of the last five years stimulated many activities and programs by groups in both the private and public sectors aimed at curbing drunk and drugged driving in the high-risk Christmas and New Year holiday period and thereafter;

Whereas the activities and programs during National Drunk and Drugged Driving Awareness Week have heightened the awareness of the American public to the danger of drunk and drugged driving: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the week of December 13, 1987, through December 19, 1987, is designated as "National Drunk and Drugged Driving Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.

## NATIONAL SKIING DAY

The joint resolution (S.J. Res. 146) designating January 8, 1988, as "National Skiing Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 146

Whereas commercial alpine and nordic skiing operations are among the fastest growing commercial uses of the national forests;

Whereas skiing increases the recreational value of the national forests by providing a winter recreational use for such forests;

Whereas skiing is a healthful activity that promotes physical well-being, contributes to the enrichment of the human spirit, and fosters an appreciation of the outdoor environment;

Whereas skiing provides enjoyment to millions of people each winter;

Whereas skiing improves employment opportunities in, and contributes to the economic stability of, a number of States;

Whereas the people of many rural communities in the United States rely primarily on skiing for winter employment and income; and

Whereas people throughout the world can become aware of the environmental grandeur and recreational resources of the United States by skiing in the United States: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That January 8, 1988, is designated as "National Skiing

Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such day with appropriate ceremonies and activities.

## AFRICAN AMERICAN EDUCATION WEEK

The joint resolution (S.J. Res. 174) designating the week beginning November 15, 1987, as "African American Education Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 174

Whereas the enrollment of African American students in urban public school districts is expected to increase significantly by 1990, but the number of African American educators available to teach these students is expected to decline;

Whereas a critical shortage of African American educators already exists in the teaching force, and the percentage of African Americans pursuing careers in education has declined significantly in recent years;

Whereas the National Alliance of Black School Educators promotes academic excellence as the cornerstone of achievement and upward mobility for African American students and promotes teaching as a viable career option for African Americans;

Whereas the commitment of the National Alliance of Black School Educators to African American education is consistent with the current movement in the United States to reform education in the public schools; and

Whereas the National Alliance of Black School Educators has initiated and will coordinate a celebration of African American education that will occur during the week of November 15, 1987: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the week beginning November 15, 1987, is designated as "African American Education Week", and the President is authorized and requested to issue a proclamation calling upon—

(1) the Department of Education, and State and local governments, to support appropriate ceremonies and activities carried out to observe such week;

(2) schools and communities in which African Americans are represented to demonstrate their commitment to the education of African Americans; and

(3) community organizations that share an interest in the education of African Americans to intensify their efforts to support the achievement of academic excellence by African Americans.

## NATIONAL DRINKING WATER WEEK

The joint resolution (S.J. Res. 185) to designate the period commencing on May 2, 1988, and ending on May 8, 1988, as "National Drinking Water Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 185

Whereas water itself is God-given, and the drinking water that flows dependably through our household taps results from the dedication of the men and women who operate the public water systems of collection, storage, treatment, testing, and distribution that insures that drinking water is available, affordable, and of unquestionable quality;

Whereas the advances in health effects research and water analysis and treatment technologies, in conjunction with the Safe Drinking Water Act Amendments of 1986 (Public Law 99-339), could create major changes in the production and distribution of drinking water;

Whereas this substance, which the public uses with confidence in so many productive ways, is without doubt the single most important product in the world and a significant issue of the future;

Whereas the public expects high quality drinking water to always be there when needed; and

Whereas the public continues to increase its demand for drinking water of unquestionable quality: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the period commencing on May 2, 1988, and ending on May 8, 1988, is designated as "National Drinking Water Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such period with appropriate ceremonies, activities, and programs designed to enhance public awareness of drinking water issues and public recognition of the difference that drinking water makes to the health, safety, and quality of the life we enjoy.

## NATIONAL CHALLENGER CENTER DAY

The joint resolution (S.J. Res. 201) to designate January 28, 1988, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger,* was considered.

Mr. GARN. Mr. President, I am pleased that Senate Joint Resolution 201, to proclaim January 28, 1988, as National Challenger Center Day is being brought before this body. With my distinguished colleague, Senator GLENN, and 66 other of our colleagues as cosponsors, I ask for the consideration and passage of this legislation today.

Once again, I want to remark on the strong support this commemorative legislation has and thank those Senators and the members of their staffs who responded quickly and enthusiastically to offer their support as cosponsors to this measure. Their willingness to be helpful affirms the validity of the Challenger Center's cause and is a measure of the strong interest in both remembering and honoring the *Challenger* crew and their families.

Certainly, there are few instances when the enthusiasm and vigor of a group of people like the *Challenger* crew can capture the attention of not only a nation, but literally the world around them. There was no one who was not praying and hoping for the successful completion of that *Challenger* mission. We cheered for them, and when tragedy struck, we mourned for them, for their families, and for our own personal loss—as individuals, as a nation, and as the world.

So we seek for a way to soften the blow and to find purpose in what is difficult. The families of the crew members found a way to continue the important mission of the *Challenger* crew. As you all know, they decided in the aftermath of the accident to establish a space education center called the Challenger Center as a living memorial to their loved ones. Their hope is that this center will continue the final mission of the *Challenger* and help to complete the dreams of those who flew her.

The center will provide the children and young people of the Nation with an opportunity to experience the sciences, especially the space sciences, at work. It will help teachers learn how to be more effective in teaching the concepts embodied in space science. And it will serve as a focal point to bring together the best talents, skills, and resources to continue to improve learning and teaching opportunities for generations to come.

The center has made significant strides in establishing a Washington headquarters, as well as regional mission sites and affiliated museums across the country. Over 10,000 individuals have contributed in excess of $2 million, and the families and friends of the Challenger Center have traveled thousands of miles to communicate the purpose of the Challenger Center and to garner valuable support for its programs.

In addition, there are a great number of my colleagues in the Senate who are acting in supportive roles in many different ways to promote and endorse the Challenger Center. I thank them, not only for their support of this resolution, but for their support in other ways as well.

Focusing on the Challenger Center is an appropriate way to mark the anniversary of the shuttle accident. We can forward the dreams of Dick Scobee, Mike Smith, Ron McNair, Ellison Onizuka, Judy Resnik, Greg Jarvis, and Christa McAuliffe by pursuing a functioning and completed Challenger Center.

Passage of this resolution will aid the cause of the Challenger Center by directing public attention to the living memorial that the center will be. It will also remind us again of those seven wonderful people and the sacrifices they made. For these reasons, I ask for immediate consideration and passage of this resolution.

Mr. GLENN. Mr. President, I would like to rise in support of this resolution.

Today we stand at a crossroads for the space program—we have moved beyond the tragedy of the *Challenger* accident, but have not yet stepped firmly on the path to a revitalized space program.

Twenty-five years ago, America was at the cutting edge of space technology. We were firmly committed to excellence in space, and were prepared to do what was necessary to ensure that we remained at the forefront of the modern scientific revolution. Today, we need to commit ourselves to another quarter century of excellence, to see to it that we have what it takes to bring us triumphantly into the 21st century, and to ensure that our most precious resource, our children, have the educational opportunities to take full advantage of our technical advances.

Today, we have before us an indication of the path we are choosing. The Challenger Center for Space Science Education is well on the way to becoming reality. It is a place where the educational mission of the *Challenger* can be continued. The center is designed to stimulate and enhance young people's knowledge and participation in science, particularly in space science. It is a wonderful idea, and one that merits our full support.

Perhaps the most exciting thing about the Challenger Center, however, is that it is not a statue that will be solemnly viewed and forgotten, nor simply a once-a-year observation of a tragic event. It is a living memorial expressing the goals and ideals of the *Challenger* crew, one which would invite participation and one which would embody the mission of the space shuttle *Challenger* and further the education of our Nation's youth. Its success is not only an indication that the *Challenger's* educational mission will continue, but that public sentiment is for the space program.

Almost more important than this, however, is the fact that the Challenger Center for Space Science Education stands as a symbol for the two principles which made this country what it is today. First, it stands for education, which is one of the backbones of our Nation, perhaps the most important element in our society. Second, it stands for research and scientific advance, which allowed us to continually push back our frontiers. These two factors are what built this country, and we need to do all we can to ensure that they continue to build and develop our Nation.

Today we do indeed stand at a crossroads. It was brought about by the *Challenger* tragedy, and in many ways we can blame the accident for lost momentum in the space program. However, we can also see now that we were full of complacency, a sense that we could continue to reap success because we had always done so—and that was a very dangerous attitude to take. We are now confronted with a multitude of choices regarding the space program, but that is a good thing, for we can now choose to make America's excellence in space a national goal, the Challenger Center will help us make this positive choice, and we now have a firm commitment to the future.

The joint resolution (S.J. Res. 201) was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 201

Whereas the crew of the space shuttle Challenger was dedicated to stimulating the interest of American children in space flight and science generally;

Whereas the members of the Challenger crew gave their lives trying to benefit the education of American children;

Whereas a fitting tribute to that effort and to the sacrifice of the Challenger crew and their families is needed;

Whereas an appropriate form for such a tribute would be to expand educational opportunities in science by the creation of a center that will offer children and teachers activities and information derived from American space research; and

Whereas the Challenger Center is the only institution expressly established by the immediate families of the crew of the Challenger for the above-named purposes, and is intended to be the living expression of the Nation's commemoration of the Challenger crew: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That January 28, 1988, is designated as "National Challenger Center Day" and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such day—

(1) by resolving that in the course of their regular activities the people of the United States will remember both the Challenger astronauts who died while serving their country, and the importance of the Challenger Center is honoring the accomplishments of the Challenger crew by continuing their goal of the expansion of interest and ability in space and science education; and

(2) with other appropriate ceremonies and activities.

## HONORING IRVING BERLIN

The resolution (S. Res. 246) to honor Irving Berlin for the pleasure he has given to the American people through almost a century of his music, was considered and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 246

Whereas Mr. Berlin emigrated from Russia with his family to the United States in 1893 and became a resident of New York City;

Whereas Mr. Berlin began as a young boy singing on the streets of New York and worked all his life to become one of the most successful musical composers and publishers in American history;

Whereas Mr. Berlin had his first hit song in 1909, and wrote his first musical in 1916;

Whereas Mr. Berlin has composed the music and lyrics for over 900 songs, 19 Broadway musicals, and 18 films;

Whereas Mr. Berlin received the Congressional Gold Medal from President Eisenhower for his famous song "God Bless America" in 1955;

Whereas Mr. Berlin's music has been imprinted in the hearts and minds of Americans for over 70 years with songs such as, "White Christmas" and "There's No Business Like Show Business";

Whereas Mr. Berlin has contributed the proceeds from many of his songs to such esteemed organizations as the Army Emergency Relief Fund and the Girl and Boy Scouts of America; and

Whereas Mr. Berlin will be 100 years old on May 11, 1988, and deserves a national acknowledgment of appreciation for three quarters of a century of his talent: Now, therefore, be it

*Resolved,* That it is the sense of the Senate that Irving Berlin be recognized for his tremendous musical accomplishments and for the pleasure he has given to the American people.

## RECOGNIZING RACHEL CARSON ON THE 25TH ANNIVERSARY OF HER BOOK "SILENT SPRING"

The resolution (S. Res. 267) to express the sense of the Senate that Rachel Carson is recognized on the 25th anniversary of her book "Silent Spring," for her outstanding contributions to public awareness and understanding of environmental issues, was considered and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 267

Whereas Rachel Carson, through her writings and work, made unprecedented contributions to public awareness and understanding of the natural environment and environmental issues;

Whereas her book, "Silent Spring", awakened the American public to the dangers posed by the misuse of chemical pesticides;

Whereas "Silent Spring" helped foster general public concern for the integrity of the natural environment and for the environmental threats posed by pollution of the water, air, and land;

Whereas the growth of environmental consciousness that occurred in the years following "Silent Spring" provided the foundation necessary for the enactment of our existing environmental laws;

Whereas continued public understanding of the natural environment is essential to the continued success of efforts to identify and respond to pollution problems; and

Whereas 1987 is the twenty-fifth anniversary of Rachel Carson's book, "Silent Spring": Now, therefore be it

*Resolved,* That it is the sense of the Senate to recognize the outstanding contributions of Rachel Carson to public awareness and understanding of environmental issues on the twenty-fifth anniversary of her book, "Silent Spring".

## COMMENDING THE EFFORTS OF ORGANIZERS AND PARTICIPANTS OF "JUSTICE FOR ALL DAY"

The resolution (S. Res. 303) to commend the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987, was considered, and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 303

Whereas the poverty, hunger, and homelessness that afflict this great Nation are issues of tremendous concern to all Members of the United States Senate and the citizens they represent;

Whereas the efforts to combat the tragedy of poverty should include all sectors of American society, public and private, rich and poor, liberal and conservative; and

Whereas all efforts to abolish poverty and destitution must begin with an understanding of the causes of poverty and the myths and misunderstandings that obscure the plight of Americans in poverty: Now, therefore, be it

*Resolved,* That the Senate—

(1) commend the efforts and commitment of the organizers and participants of "Justice For All Day", November 17, 1987; and

(2) express gratitude to all persons who work to abolish poverty and ease the suffering of the poor.

## RECOGNIZING THE DISABLED AMERICAN VETERANS VIETNAM VETERANS NATIONAL MEMORIAL

The joint resolution (H.J. Res. 97) to recognize the Disabled American Veterans Vietnam Veterans National Memorial as a memorial of national significance, was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

## NATIONAL FAMILY CAREGIVERS WEEK

The Joint resolution (H.J. Res. 130) to designate the week beginning November 22, 1987, as "National Family Caregivers Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

## MODIFICATION OF S. 1158 AS ENGROSSED

Mr. BYRD. Mr. President, I ask unanimous consent that in the engrossment of the bill, S. 1158, an act to extend the authorization of appropriations for programs and activities under title III of the Public Health Service Act, to establish a National Health Service Corps Loan Repayment Program, to otherwise revise and extend the program for the National Health Corps, and for other purposes, the Secretary of the Senate be authorized and directed to make the following correction.

Namely, on page 49, line 7, insert "clinical psychology," after the word "podiatry,".

The PRESIDING OFFICER. Without objection, it is so ordered.

## VETERANS' HOME LOAN PROGRAM IMPROVEMENTS ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 287, S. 1801, dealing with veterans' home loans.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (S. 1801) to amend title 38, United States, Code, to increase the maximum Veterans' Administration home loan guaranty, reduce Veterans' Administration guaranteed loan defaults and foreclosures, and make other improvements in the Veterans' Administration home loan program, and for other purposes.

Mr. BYRD. Mr. President, I ask unanimous consent that an amendment by Senators CRANSTON and MURKOWSKI be considered and agreed to; a statement by Mr. CRANSTON be printed in the RECORD as though read; the amendment be adopted; the motion to reconsider be laid on the table; the bill advanced to third reading; that the Senate then proceed to the consideration of H.R. 2672; to discharge the Veterans Committee of the House companion bill, H.R. 2672; that that bill be taken up and that all after the enacting clause be stricken and that the language of the bill be inserted in lieu thereof and that the bill, H.R. 2672, then be advanced to third reading, passed, a motion to reconsider laid on the table; and that a title amendment on behalf of Senators CRANSTON and MURKOWSKI be agreed to and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The text of the amendment (No. 1114) appears in today's RECORD under "Amendments Submitted.")

STATEMENT OF MR. CRANSTON ON AMENDMENT NO. 1114

Mr. CRANSTON. Mr. President, I rise to urge my distinguished colleagues to support the amendment to S. 1801 offered on behalf of myself and the distinguished ranking minority member of the committee [Mr. MURKOWSKI].

The amendment would, first, expand the scope of section 10 of the bill, which would generally require that the creditworthiness of the buyer of a veteran's home be established before the buyer could assume a VA-guaranteed loan, to include all subsequent buyer-assumptors, rather than only the initial buyer who purchases the home and assumes the loan directly from the veteran.

Section 10 of S. 1801 seeks to protect both the veteran and the VA against the assumption of a VA-guaranteed loan by a buyer who cannot afford to buy—or does not intend to make a good faith purchase of—the veteran's home. The establishment of a creditworthiness requirement should help ensure that those who assume VA-guaranteed loans can afford to do so and that there is a financiallly-responsible party other than the veteran who would be liable to the VA should the loan go into default.

Mr. President, as drafted, the requirements in section 10 apply only to the initial assumptor of the loan, that is, the buyer who initially purchases the home from the veteran. However, should the initial buyer later decide to sell the home, it is equally important that any subsequent buyer be approved from a credit standpoint because the prospects for the mortgage loan being paid are much greater when the current owner of the home is able to keep up the payments. Accordingly, this amendment would expand the scope of section 10 to cover all subsequent buyers.

Second, the amendment would repeal the provision in section 2(a) of the just-enacted Public Law 100-136 which restricts the VA from selling loans made to certain purchasers of VA acquired foreclosed properties—known as "vendee loans"—without recourse unless the amount received is equal to an amount which is not less than the unpaid balance of the loan, that is, for 100 percent of par value. This provision effectively prohibits without recourse sales.

S. 1691, enacted as Public Law 100-136, was introduced by Senator MURKOWSKI and myself on September 16 in order to provide 90-day extensions of two provisions—the 1-percent loan fee and the provisions of section 1816(c) of title 38, establishing the "no-bid formula" for determining whether the VA acquires, or does not acquire, at a liquidation sale the property securing a VA-guaranteed loan that is in default—which had September 30, 1987, sunset dates established in section 2512(c)(2) of the Deficit Reduction Act of 1984 (Public Law 98-369).

Mr. President, S. 1691 was introduced as an interim measure, pending enactment of a comprehensive home loan bill such as the one before us in order to prevent a substantial hiatus in the collection of the fee, which both would have been inequitable to those required to pay the fee before and after the hiatus and would have jeopardized the solvency of the VA's Loan Guaranty Revolving Fund [LGRF]. Without the fee, there would be a

need for additional appropriations—currently about $20 million per month—to pay the claims of the holders of defaulted VA-guaranteed loans.

On October 1, 1987—the day after the fee and no-bid provisions had expired—the House passed an amended version of S. 1691. The House-passed version provided, in lieu of the 90-day extension, a 46-day extension through November 15, 1987. It also contained a provision to prohibit the VA permanently from selling vendee loans without a repurchase agreement which would make the VA ultimately liable for a subsequent default by the new purchaser, that is, without recourse, unless such loans are sold for par value. The Senate concurred in the House amendments on October 1, 1987, and the President finally signed the bill on the last day—October 16, 1987. During the delay, the VA's LGRF lost approximately $10 million.

Mr. President, the administration announced, in January 1987, that it would require, beginning in fiscal year 1988, that all vendee loans be sold without recourse. The administration further insists that, over the next 3 fiscal years, $900 million of loan assets from the VA's loan portfolio be sold on that basis. In May 1987, the VA attempted one sale of vendee loans without recourse. Despite extensive advertising of and major preparations for the sale, the results were a disastrous failure. The VA received bids for only about $8 million of the $84 million of the vendee loans it planned to offer for sale, and the amount of those bids ranged from only 15 to 65 percent of the par value of the loans.

The administration's plan is designed to make a series of reductions of the budget deficit over the next 3 years. However, it is of questionable policy justification, particularly as applied to the $900 million in older VA loans. Not only will the sale of 30 percent of the VA's accumulated loan portfolio over each of the next 3 fiscal years greatly reduce gradual payments—in the form of interest and principal—into the LGRF, but, as the attempted sale in May indicates, at least if current VA selling practices are used, in order to sell vendee loans without recourse the VA will have to discount these loans greatly. Thus, any revenues achieved through such sales would likely be far less over the long term than they would have been if the loans were sold with recourse. If the House amendment simply ensured that nonrecourse sales could be made only if the VA obtains fair value for the loans, I could probably have endorsed it. However, as I indicated when the Senate reluctantly accepted the amendment on October 1 in order to keep the 1-percent fee alive, I believe that it went too far in a number of respects.

The House amendment has the effect of permanently prohibiting the VA from selling the vendee loans without recourse. I do not believe such a permanent and rigid limitation on without recourse sale as long as the sale price of the loan is not discounted from what the price would be if the loan were sold with recourse.

Mr. President, I know that Senator MURKOWSKI agrees with me in this regard. However, despite our strong objection to this sweeping prohibition, we felt compelled to accept it in the House-passed version of S. 1691 in order to preserve the loan fee and the solvency of the LGRF, which secures home loan guaranties. The House committee leadership, during debate on S. 1691, indicated that if the short-term extension of the fee were not enacted they would not agree to reinstate it.

Although I do not agree that an absolute prohibition of without recourse sales is desirable, I do share the House's concern that the LGRF must be protected against the administration's attempts to provide quick cash for one-time reductions of the budget deficit at the expense of the Home Loan Program and the veterans who benefit from it and to use without recourse sales as a means of "privatizing" the program.

It may be that, regardless of the marketing strategies used, the VA would be able to sell vendee loans without recourse only at unacceptable discounts. However, I do not believe that has been demonstrated solely on the basis of the VA's first attempt at such a sale. Rather, the VA—perhaps with the assistance of independent financial consultants familiar with such loan sales—needs to develop improved marketing strategies to fairly test the viability of such sales. Perhaps such methods as overcollateralized loans or reinsuring them privately—both forms or resources that may be less costly—should be tried by the VA as they were recently tried by the Farmers Home Administration on October 1.

Mr. President, OMB and CBO, as a result of a recent dubious shift in budget scorekeeping methodology, have attributed to the enactment of section 2 of Public Law 100-136 a cost of about $1 billion and over $600 million, respectively, in fiscal year 1988 outlays. Under the Gramm-Rudman-Hollings [GRH] baseline, this results in a requirement that equivalent savings be enacted in order to avoid sequestration. Under last year's scorekeeping, this would not have been the case. Such is the illusory nature of the GRH process.

Accordingly, I am proposing repeal of the provision in order to express our dissatisfaction with it as is and to try to bring about a reversal of the phoney CBO/OMB cost attributed to enactment of section 2. But, I do not favor ultimately a repeal. Rather, if Senate passage of this amendment is achieved, I intend to work closely with our colleagues on the House Veterans' Affairs Committee to seek to reach a compromise which would allow without recourse sales where that would be to the benefit of the LGRF. I believe we should eventually be able to find a solution that will address the concerns which have been raised in both bodies while allowing the VA to sell vendee loans without recourse when that would be in the interest of the LGRF. I want to put the VA and OMB on notice that if they want this provision modified, the burden is on them to come up with an acceptable alternative to achieve fiscally sound goals, since I am quite certain that the House committee will not accept nor will I advocate they accept outright repeal.

Mr. President, as chairman of the Committee on Veterans' Affairs, I rise to urge my colleagues to support passage of S. 1801—the proposed Veterans Home Loan Program Improvements Act of 1987—unanimously reported favorably by the Committee on Veterans' Affairs.

Before I speak further, I would like to express my appreciation to the ranking minority member, the Senator from Alaska [Mr. MURKOWSKI], for the many contributions he has made to this legislation and the great cooperation he has shown in helping me to develop a home loan measure. I am delighted that this bill—which is the most comprehensive bill on the home loan program that this committee has ever reported out—is the result of such a united, bipartisan effort.

Mr. President, great credit is owed for this legislation to the Senator from Florida [Mr. GRAHAM], who so very ably chaired the committee's June 17 comprehensive hearing on legislation and oversight pertaining to the VA Home Loan Guaranty Program. After carefully reviewing the testimony from the hearing, on July 31, the committee voted to report S. 9, the proposed Omnibus Veterans' Benefits and Services Act of 1987—which I introduced on January 6, 1987—favorably to the Senate with an amendment in the nature of a substitute, incorporating in part C of title I of the bill provisions pertaining to the home loan guaranty program derived from an amendment which I proposed with Senator MURKOWSKI. S. 9 as reported also contained provisions relating to other VA benefits and services programs and will be reported to the Senate very shortly.

As I indicated earlier in connection with our floor amendment, Senator MURKOWSKI and I introduced S. 1691 on September 16 as an interim measure to extend for 90 days two provisions—the 1-percent loan fee and the

no-bid formula—which had sunset dates of September 30, 1987. The House amended the bill on October 1 to provide 46-day extensions and added a provision which, in effect, permanently prohibited the VA from selling vendee loans without recourse. While I expressed serious reservations about the newly added without recourse provision on behalf of Senator MURKOWSKI and myself, we urged the Senate, in order to preserve the loan fee, to agree to the House version. That same day, October 1, the Senate concurred in the bill as amended, and the President finally signed S. 1691—now Public Law 100-136—on October 16, 1987.

On October 19, 1987, the committee voted to introduce as a separate bill and report favorably to the Senate the provisions pertaining to the home loan guaranty program contained in part C of title I of S. 9. I introduced that bill—S. 1801—on October 20, 1987, on behalf of myself and Senator MURKOWSKI and committee members MATSUNAGA, DECONCINI, MITCHELL, and GRAHAM. The bill was reported without amendment on October 20.

PURPOSE OF THE BILL

Mr. President, S. 1801 provides a series of measures designed to improve the financial solvency of the VA home loan program and the program benefits available to our veterans. In it we have taken steps to reduce the increasing default and foreclosure rates which threaten the program, to improve program administration, and to ensure that program benefits remain accessible to all veterans, regardless of the area of the country in which they live or the type of housing which they seek to buy. The bill would modify the VA's operation of various program functions, including property acquisition and disposal, as well as increase protections and assistance for veterans participating in the program.

I believe that it is imperative that we ensure that this program continues to meet the needs of our veterans and help them—as it already has helped over 12 million veterans and their families—to achieve the American dream of owning their own homes, which many of them could not do without a VA home loan guaranty. Through the passage of S. 1801, the Senate can help ensure that economic downturns at either the national or local level do not diminish the value of, or reduce the opportunity for veterans to use, these VA benefits which they have earned in service to our country.

SUMMARY OF S. 1801 AS REPORTED

S. 1801 as reported contains amendments to chapters 1 and 37 of title 38, United States Code, which would:

First, increase the maximum VA home loan guaranty amount from $27,500 to $36,000—section 2(a).

Second, provide a permanent exemption from sequestration for the VA home loan programs—section 2(b).

Third, eliminate the occupancy restriction on the refinancing of VA loans for the purpose of obtaining interest-rate reductions by providing that the veteran either occupy the home or certify that he or she had previously occupied it—section 3(a).

Fourth, eliminate the restriction limiting the term of an interest rate reduction refinancing conventional housing loan to the remaining term of the loan being refinanced—section 3(a).

Fifth, limit the amount of refinancing loans for the purpose of obtaining cash for equity to 90 percent of the appraised property value—section 3(b).

Sixth, require the VA, when possible, to use State rather than regional statistics in evaluating residual minimum income for purposes of the underwriting criteria applicable to VA-guaranteed loans—section 4.

Seventh, for a 2-year trial period, require the VA, after receipt of a 90-day default notice from the lender, to furnish the veteran with, first, information regarding alternative procedures to foreclosure that are appropriate in light of the veteran's particular circumstances and regarding the veteran's and the VA's liabilities, and second, to the extent feasible, counseling—section 5.

Eighth, extend for 1 year, until September 30, 1988, the provisions establishing the circumstances under which the VA either acquires a property at the liquidation sale or simply pays the lender under the guaranty, and revise those provisions to exclude interest accrued during any period of forbearance requested by the VA from property acquisition costs and, if the VA acquires the property, from the payment to the lender—section 6.

Ninth, increase from 1 to 2.5 percent the fee on vendee loans made to purchasers of VA-acquired foreclosed properties and require a 10-percent downpayment on all vendee loans—section 7.

Tenth, require the VA, during fiscal years 1988, 1989, and 1990, generally to sell on a cash basis not less than 40 percent nor more than 60 percent of the foreclosed properties which it acquires, but permit the Administrator to sell up to 70 percent of such properties on a vendee-loan basis when selling more than 60 percent on that basis is necessary for the effective functioning of the loan guaranty revolving fund.

Eleventh, exclude foreclosure costs from the veteran's liability if the veteran timely offered to convey the property to the VA by means of a deed in lieu of foreclosure without being released from his or her debt to the VA, the VA refused the voluntary conveyance, and the VA ultimately acquired the property by means of foreclosure—section 9.

Twelfth, override State statutes eliminating the mortgagor's remaining indebtedness after a nonjudicial foreclosure to the extent necessary to preserve the veteran's remaining debt to the VA after the deed is accepted in those cases where the veteran has offered to convey the property to the VA by means of a voluntary deed in lieu of foreclosure and has agreed to remain liable for any remaining debt after VA acceptance of the deed—section 9.

Thirteenth, require that, except as I will describe shortly, before a VA-guaranteed loan may be assumed by a buyer of the home, the VA or approved lender make a determination regarding the buyer's creditworthiness, using the same standards as are used to evaluate the creditworthiness of a veteran applying for a guaranteed loan, and if the buyer is found creditworthy, that the veteran automatically be released from liability to the VA—unless the Administrator determines this would not be in the interest of the solvency or stability of the LGRF—section 10 (a) and (b).

Fourteenth, provide, alternatively, that first, the veteran and the buyer could request that, instead of the credit check, the veteran and the buyer be made jointly and severally liable for the loan, second, the veteran would be released from liability after 5 years unless a foreclosure proceeding had been initiated and not dismissed or withdrawn, third, the VA or approved lender would be required to explain this alternative to the veteran before a credit check could be instituted, and fourth, the veteran would have to certify that he or she was so advised—section 10 (a) and (b).

Fifteenth, impose on a buyer assuming a VA loan a fee equal to 0.5-percent of the loan balance, for deposit in the LGRF—section 10(c).

Sixteenth, require the Administrator to establish, first, reasonable limits on the fee a lender may charge for making a determination of creditworthiness—$500 maximum—on a buyer assuming a VA loan and for processing an application for an assumption where the veteran retains liability and no credit check is performed—expenses up to $50—and, second, requirements for the timely processing of applications for acceptance of assumptions—section 10(c).

Seventeenth, require a 5-percent down payment on VA-guaranteed manufactured home loans—section 11.

Eighteenth, expand the VA's authority to pay from the LGRF certain loan guaranty program administrative expenses to include supplementary contractual services and equipment not otherwise authorized to be paid for out of the LGFR when the Adminis-

trator makes a finding that that would be in the best interest of the long-term stability and solvency of the LGRF, despite the unavailability of regular appropriations; and provide that, in each fiscal year, there would be available for such contracting the additional amounts collected as a result of increasing from 1 to 2.5 percent the fee on vendee loans and imposing a 0.5 percent fee on assumptions as proposed in the bill, plus $2 million in fiscal years 1988 and 1989, but not to exceed a total of $15 million in any fiscal year—section 12.

Nineteenth, extend the 1-percent VA loan guaranty fee for 2 years, through September 30, 1989—section 13.

Twentieth, for a 2-year trial period, provide for direct appraisals in the case of approved lenders, provided the VA establishes, through the new authority—proposed in the provisions described in item 17, above—to contract for services out of the LGRF, an appraisal review monitoring system on at least a spot-check basis—section 14.

Twenty-first, require the VA to list all of its acquired foreclosed properties with real estate brokers under arrangements designed to facilitate the most expeditious sale at the highest possible price—section 15.

BACKGROUND

The VA home loan guaranty program, established by the Servicemen's Readjustment Act of 1944—Public Law No. 346, 78th Congress—was designed to assist veterans returning home from World War II who, due to their military service, and had been unable to establish the credit history necessary to obtain a home mortgage. Since 1944, the program has guaranteed loans totaling more than $270 billion, helping more than 12 million veterans to purchase homes. In fiscal year 1986, the VA guaranteed 351,242 home loans totaling a record $21.9 billion and issued commitments to guarantee loans totaling another $12.4 billion.

Traditionally, for the vast majority of VA-guaranteed loans the cost to the Government of providing the guaranty has been quite small and the benefit to veterans and to society quite significant. Through fiscal year 1986, 7.5 million guaranteed loans, totaling $102.7 billion, have been paid in full. From its inception in 1944 until 1961, the Home Loan Guaranty Program was funded through appropriations which totaled only $730 million to the VA's readjustment benefits account. That's an average of $42.9 million per year for the 5,628,091 million loans made during those 17 years. In 1962, the loan guaranty revolving fund [LGRF] was established for the dual purposes of paying program costs and receiving program revenues.

As a result of the downturn in certain areas of the economy in recent years, high default and foreclosure rates on properties guaranteed by VA loans coupled with a large VA inventory of foreclosed homes acquired at liquidation sales have threatened the viability of the program by substantially increasing program costs.

Mr. President, I believe that it is not realistic to expect that a benefits program will incur no costs. Certainly, however, when the cost of such a program increases significantly, it is essential for Congress to take a close look to determine the reasons for the increase and to take steps to minimize program costs. That does not mean changing the fundamental nature of the loan guaranty program, however, by either drastically curtailing it or insisting that it must be paid for in full by those seeking to use it.

Mr. President, the Congress has taken steps in the past few years to improve both program and veteran protections. Both Congress and the VA must ensure that any changes in the program—particularly revisions of credit-underwriting standards—are not implemented so as unduly to prevent veterans from qualifying for VA-guaranteed loans, since one of the primary purposes of the guaranty is to assist veterans to obtain loans they might not be able to obtain with the Federal guaranty. Nevertheless, it does not benefit the veteran to facilitate a loan for a house which the veteran cannot afford and on which he or she eventually defaults.

Responsible legislation must also take into account the great need to reduce the towering Federal deficit with respect to Federal programs of benefits and services. I believe that through S. 1801 the Congress can both make improvements in the Home Loan Program benefits that enhance their value to veterans and address areas of the program and make changes that would maintain the program's solvency and reduce its dependency on taxpayers' funds without compromising the basic purposes of the program.

LOAN GUARANTY AMOUNT

Section 2(a) of S. 1801—which is derived from section 6 of S. 9 as introduced and which is similar to provisions I introduced in the 98th and 99th Congresses—would amend section 1810(c) of title 38 to increase the maximum VA home loan guaranty amount from $27,500 to $36,000.

The VA's home loan guaranty is designed to substitute, in large measure, for the downpayment that would otherwise be required when a veteran purchases a home. However, housing prices have risen substantially since the most recent increase in the VA loan-guaranty maximum enacted by Congress, effective October 1, 1980. According to the best available data, the median price of an existing home has risen by 35.6 percent since that time, and, in the case of new homes, has risen 57.5 percent.

For thousands of veterans seeking to use their VA home loan guaranty entitlements, the cost of housing is so high that they cannot find any decent housing for the maximum price—$110,000—for which the current VA loan guaranty maximum generally makes no-downpayment loans possible. By raising the guaranty by 31 percent to $36,000, section 2(a) would allow the value of the VA home loan guaranty to keep pace with increases in the housing market, and help ensure that the loan guaranty program continues to play the role Congress intends of helping veterans become homeowners in all areas of the country, without excluding those who live in higher-cost areas, such as California, for example.

In addition to preserving the value of the guaranty for veterans at the higher end of the market, however, I strongly believe that it is important that such value be maintained for veterans at the lower end as well. Credit-underwriting standards for VA-guaranteed loans are more flexible than the standards used for conventional loans. This flexibility provides more veterans with the opportunity to participate in the program, particularly those who might not qualify for conventional loans and for whom the program often provides the only chance for home ownership. The 60-percent maximum guaranty provides substantial protection for lenders making loans—particularly loans under $50,000—to veterans who might not meet conventional loan underwriting criteria.

Although loans under $50,000 account for a disproportionately high percent of VA loan foreclosures, even among these "higher risk" veterans, the rate of foreclosure was less than 10 percent for fiscal years 1980 through 1986. The VA guaranty thus allows the vast majority of such veterans to purchase and remain in homes—which most likely could not have happened if they had had to rely on the conventional market for loans. A substantial reduction in the 60-percent maximum guaranty could serve as a disincentive to the lender to serve the veteran who needs the program most. I strongly believe that the home loan program should continue to be accessible to these veterans.

LOAN PROGRAMS EXEMPTIONS

Mr. President, section 2(b) of S. 1801 would, effective November 19, 1987, amend section 113(a) of title 38 to make the VA's home loan programs exempt from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119)—commonly referred to as "Gramm-Rudman-Hollings"

[GRH]—as that act may be amended, or under any other sequestration law which may be enacted. This section would also repeal provisions, in section 113(e) of title 38, requiring the Administrator, during the period that a sequestration order is in effect, to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives certain reports on VA home loan guaranty commitments.

In either the original GRH law or in subsequent legislation, Congress has enacted provisions making several categories of VA programs exempt from the uniform percentage reductions that are generally required to be made in Federal programs during a fiscal year when the GRH targets for that year would otherwise be exceeded. However, no legislation has been enacted to exempt the loan guaranty program. I strongly believe that such an exemption should be enacted—both because it is vitally important to keep our commitment to those who have served that this benefit be maintained and because the program contributes to sound national housing policies and sustaining the affected industries.

Moreover, there appears to be no way for sequestration to be applied equitably to this program. In fiscal year 1986, the VA indicated that it would implement that year's sequestration order by cutting off the issuance of commitments when the sequestration cap was reached. Thus, the veterans whose home loan applications were approved after the cap was reached would be denied a guaranty at that point and would be at risk of having purchase agreements fall through before the issuance of guaranty commitments resumed at the start of the next fiscal year. If that should happen, veterans would in effect be denied the benefit in toto. Other veterans would be completely unaffected.

Mr. President, it is unacceptable for equally deserving veterans to be treated so disparately with respect to this important benefit. Yet, this is what a sequestration almost certainly would bring about.

For this and other reasons, when the Home Loan Guaranty Program was threatened by sequestration for fiscal year 1986, Congress enacted two emergency measures which provided a de facto exemption for that year.

Establishing an exemption now would avoid the need for legislative action which I am confident that Congress would take whenever it is necessary. Thus, Mr. President, I believe that a permanent exemption for the Loan Guaranty Program should now be enacted to prevent sequestration from shutting the program down.

REFINANCING HOME LOANS

Section 3 of S. 1801 would amend sections 1810(e)(1) and 1819(a)(4)(A) of title 38 to allow the VA to guarantee a loan to refinance an existing VA-guaranteed loan if the veteran both owns the home securing the loan and either occupies, or certifies that he or she previously occupied, the home.

Current law authorizes the VA to guaranty a loan to refinance an existing VA-guaranteed mortgage for the purpose of achieving a reduction in the loan interest rate if the veteran both owns and occupies the home at the time the VA guarantees the refinancing loan. I believe that this restriction on refinancing often works to the detriment of both veterans and the Government, since such refinancing would give the veteran homeowner lower monthly mortgage payments and decrease the risk of default. In many cases these homeowners have occupations requiring frequent moves; members of the Armed Forces and Foreign Service, in particular, are adversely affected by this requirement. Thus, S. 1801 would allow the veteran the advantages of reducing the interest rate on the loan as long as he or she at some time occupied the home. The requirement of certification in the case of former occupancy would help ensure program benefits are not used merely for investment purposes.

Mr. President, veterans also can refinance existing mortgages through VA-guaranteed loans, usually for the purpose of obtaining cash for the equity in a home, up to the value of the home. As the VA Inspector General reported in April 1987, however, allowing the veteran to receive 100 percent of the value of the home eliminates his or her equity interest in it, thereby increasing the likelihood of default on the loan. Section 3 would limit such "equity payout" refinancing to 90 percent of the appraised property value. The 90-percent limit would allow the veteran to receive cash for a substantial portion of the equity of his or her home, while protecting both the veteran and the Home Loan Guaranty Program by reducing the likelihood of default.

DETERMINATION OF MINIMUM RESIDUAL INCOME

Section 4 of S. 1801 would amend section 1810(g)(3) of title 38, to require the VA, when it establishes guidelines for residual income for determining if veteran homebuyers are a satisfactory credit risk, to base the standard on cost-of-living data from the veteran's State, rather than regional data, when reliable data concerning the particular State is available.

The VA has established guidelines regarding "residual income"—that is, the income remaining available to a veteran to purchase the necessities of life, such as food, transportation, clothing and medical care, after the veteran has satisfied his or her fixed obligations, including the proposed mortgage payment—for lenders to use in evaluating the creditworthiness of a veteran applying for a VA-guaranteed loan.

The VA has divided the country into four geographic regions for purposes of its residual income guidelines. As a result, the regions include States with diverse costs of living. In States with a substantially lower cost of living than the regional average, veterans are unfairly required to meet a higher-than-necessary standard.

I believe that it is appropriate to tailor underwriting criteria, such as for residual income, to the actual economic conditions in the State where the home is located. At the same time, these criteria should be based on reliable State economic data, which the VA contends is generally not reliable. Thus, S. 1801 would require the use of economic data relating to individual States only when reliable economic data relating to those States is available.

FINANCIAL COUNSELING ASSISTANCE

Section 5 of S. 1801 would amend section 1816(a) of title 38 to require the VA, for a 2-year trial period from January 1, 1988, to December 31, 1989, when it receives notice from the holder that a veteran is in default on a VA-guaranteed loan, to provide the veteran with information regarding alternatives to foreclosure available in light of the veteran's particular circumstances, the veteran's and the VA's liabilities, and the availability of counseling with respect to such matters. The VA also would be required to provide such counseling to the extent feasible. In addition, the Administrator, subject to the availability of appropriations and funds from the LGRF as provided in section 12 of S. 1801, would be required to take such steps as are necessary to ensure the availability of sufficient personnel to implement the provisions of this section effectively.

Although a veteran initially meets the VA's underwriting criteria and may appear to be a good credit risk at the time a loan is made, unforeseen circumstances—including changes in employment or marital status—can result in financial hardship, making it difficult for the veteran to meet his or her obligations on a VA-guaranteed loan. Often, the veteran will not know what other options may be available to deal with the situation and a default which might have been curable results in foreclosure.

Staffing shortages at VA regional offices [VARO's], in large part a function of the increased numbers of loan originations and foreclosures, have resulted in the VARO's providing varying levels of financial counseling and loan servicing to veterans.

The VA considers the holder—to whom the veteran makes the loan payments and who usually has more contact with the veteran than does the

VA—to be primarily responsible for servicing the loan. However, the VA, as the guarantor of the loan—and as the agency responsible for administering services and benefits to veterans—clearly has a strong interest in and responsibility for helping to cure defaults and prevent foreclosures. Recent studies by both the General Accounting Office and the VA's Office of Program Analysis and Evaluation have found that increased cure rates on loan defaults are associated with improved loan servicing. The GAO also found, however, that the VA does not consistently make loan servicing available to veterans in default. Despite the costs involved in providing such additional services, the GAO found that they were cost-effective when the costs of foreclosures were considered.

Mr. President, I strongly believe, in light of the increasing number of foreclosures on VA-guaranteed loans, that better coordination of servicing efforts by the lender and the VA, with an increased role by the VA, is necessary. It is in the interest of all concerned parties—the lender, the VA, and the veteran—to cure defaults on VA-guaranteed loans.

NO-BID FORMULA

Section 6 of S. 1801 would amend section 1816(c) of title 38 to extend for 1 year until September 30, 1988, the current-law sunset date for the provisions—the so-called "no-bid formula"—establishing the circumstances under which, based on whether it is financially advantageous to the Government to acquire at the liquidation sale the property securing a VA-guaranteed loan, the VA either acquires the property or pays the lender under the guaranty. S. 1801 also would revise these provisions, effective with respect to defaults which occur more than 30 days after the date of enactment, to exclude interest that accrued during any VA-requested period of forbearance from property acquisition costs and, if the VA acquires the property, from the payment to the lender.

In 1984, section 2512(a)(2) of the Deficit Reduction Act of 1984 (Public Law 98-369)—adding subsection (c) to section 1816 of title 38—was enacted to ensure that the VA did not acquire properties where that would result in net costs to the VA after resale, in excess of what the VA would pay under the quaranty without acquiring the property. This no-bid formula requires the VA to follow prescribed guidelines in determining whether acquiring the property and paying the lender's costs or paying the guaranty is in the best interest of the solvency of the LGRF. The no-bid provision was originally enacted on a trial basis with an expiration date of October 1, 1987. That date was extended to November 16, 1987, by Public Law 100-136.

In its first 3 years of implementation, the no-bid formula appears to have been generally beneficial for the Home Loan Program. By requiring the VA to factor its full acquisition and disposition costs—including property taxes, liens, and the cost of property maintenance and improvements—into its calculation of the net value of foreclosed property, the no-bid formula results in a realistic computation of net value.

Due to the enactment of the no-bid formula, the number of properties on which the VA has paid the guaranty in lieu of acquiring the property increased from 3,735 in fiscal year 1984 to 5,236 in fiscal year 1986. The VA acquired approximately 83 percent of foreclosed properties in fiscal year 1986, compared with 93.6 percent in fiscal year 1984.

However, the Mortgage Banker's Association [MBA], which represents the mortgage bankers who make over 80 percent of all VA-guaranteed loans, testified at the committee's June 17 hearing that, because the VA increasingly is paying the guaranty rather than acquiring foreclosed properties and the cost to lenders of VA-guaranteed loans thereby is increasing, "it is uncertain whether veterans in all parts of the country will be able to secure VA home loans."

I and all members of the committee are concerned with the losses that lenders, as well as the LGRF, have suffered, and we have carefully examined the MBA's suggestions relating to changes in the no-bid formula, particularly with respect to delays in foreclosure caused by VA-requested forbearance. While such forbearance will, in some cases, enable the veteran to cure a default, in other cases it results only in the accrual of additional unpaid interest.

S. 1801 would provide, therefore, that interest which accrues during a period of VA-requested forbearance not be included in the calculation of either the no-bid formula or the payment to the lender if the VA acquires the property. In light of the lenders' willingness—as expressed by the MBA—to forego the VA's payment of the interest accruing during a period of VA-requested forbearance, in return for the VA acquiring a greater number of foreclosed properties in such cases, I believe it is appropriate to exclude such interest from the no-bid calculation.

DOWNPAYMENT AND LOAN FEE REQUIREMENTS FOR VENDEE LOANS

Mr. President, section 7 of S. 1801 would amend sections 1816(d) and 1829(a) of title 38 to limit vendee loans to 90 percent of the value of the home and to require a 2.5-percent rather than 1-percent loan fee on such loans. Buyers of foreclosed properties the VA has acquired as the result of defaults on VA-guaranteed loans have two options available with respect to financing such purchases. They can pay cash, which they usually will obtain through a loan from a conventional lender, or, if they qualify under the VA's credit-underwriting criteria, the VA will finance the transaction and accept the buyer's note—known as a vendee loan. Vendee loans are not limited to veterans; in fact, it estimated that the vast majority of buyers receiving vendee loans are not veterans.

Vendee loans currently can be for 100 percent of the value of the property and are made at very favorable interest rates in order to facilitate the sale of foreclosed properties held by the VA. By offering vendee financing, the VA is able to sell properties at higher prices than it otherwise could. Unfortunately, the default rate on these low-interest rate, no-downpayment loans is higher than that on guaranteed loans to veterans. In fiscal year 1986, 4,011 vendee loans were foreclosed upon, at a substantial loss to the Home Loan Program.

The proposed 10-percent downpayment requirement would provide the buyer with an equity interest in the property, which should reduce defaults on these loans. I believe that 90 percent financing, a lower than market interest rate, and a 2.5-percent loan origination fee would continue to represent competitive financial terms sufficient to enhance the attractiveness of VA properties.

The Congressional Budget Office [CBO] agrees. The CBO estimated that implementation of the provisions in section 7 would generate savings of $76 million in both budget authority and outlays in fiscal year 1988, and 5-year savings through 1992 of $401 million in both budget authority and outlays.

Basically, Mr. President, we believe that, particularly since veterans who have earned the benefits of this program are required to pay a 1-percent fee, the borrowers who benefit from the favorable terms and rates of vendee loans should help pay the program costs.

VENDEE LOAN CEILING

Section 8 of S. 1801, which is identical to the proposed legislation which the committee has recommended to satisfy its reconciliation requirements, would amend section 1816(d) of title 38 to increase for fiscal years 1988, 1989, and 1990 the proportion of acquired foreclosed properties which the VA is required to sell on a cash rather than vendee-loan basis from a minimum of 25 percent and a maximum of 40 percent to a minimum of 40 percent and a maximum of 60 percent. S. 1801 also would decrease from 80 to 70 percent the level to which the Administrator has discretionary authority to increase the proportion of vendee-loan sales—above the proposed statutorily

specified maximum of 60 percent—when "necessary in order to maintain the effective functioning of the Loan Guaranty Program."

Since the enactment of the statutory limit on vendee-loan sales in 1984, the VA has been able to comply with the requirement to make at least 25 percent of its sales of acquired properties for cash without making substantial discounts in the cash price and therefore without great cost to the LGRF. In face, in fiscal year 1986, the VA made a greater proportion of its sales on that basis—approximately 34 percent.

As I said earlier in speaking on that amendment, I believe very serious questions exist concerning the wisdom and long-term impact on the LGRF of requiring that all vendee loans be sold without recourse. I note that the requirement to increase cash sales is advantageous in terms of a contribution to the long-term solvency of the LGRF only if the Administration's requirement that all sales of vendee loans be made on a nonrecourse basis is reinstated. That latter requirement has been invalidated by section 2 of Public Law 100-136, which the amendment offered earlier will repeal.

VOLUNTARY DEEDS IN LIEU OF FORECLOSURE

Section 9 of S. 1801 would amend section 1816 of title 38 to provide that, in the case of a veteran who conveys to the VA, by means of a deed in lieu of foreclosure, property securing a VA-guaranteed loan and agrees to remain liable to the VA for any remaining debt, laws—State "antideficiency statutes"—which extinguish the mortgage debt when the lender forecloses on the loan through nonjudicial means—including acceptance of a deed in lieu of foreclosure—would be overriden under the supremacy clause in article 6 of the U.S. Constitution. Section 9 of the bill would also amend section 1816 of title 38 so as generally to exclude from the veteran's debt to the VA the cost of a foreclosure proceeding where the VA has refused the veteran's timely and voluntary offer to convey the property to the VA without being released from the debt. The provision would not apply if the basis for the refusal was a determination that the VA would not be permitted, under the no-bid formula in section 1816(c) of title 38, to acquire the property.

Many States have enacted some form of antideficiency statute to provide generally that, where a lender forecloses on the property securing the mortgage loan by nonjudicial means—which includes accepting a voluntary deed in lieu of foreclosure—any remaining debt owed to the lender is extinguished. In such States, in order for the lender to preserve and collect any amount of the debt over and above the value of the property, the lender must bring a judicial foreclosure proceeding.

Mr. President, the GAO, in its recent review of several aspects of the VA Home Loan Program, which I mentioned earlier, recommended that the VA carefully evaluate the use of voluntary deeds in lieu of foreclosure as an option for veterans in default. The GAO noted that this alternative to foreclosure generally would enable the VA to acquire the property more quickly and to avoid substantial costs, including taxes and legal expenses, which also are added to the veteran's indebtedness.

However, in States which have enacted antideficiency statutes, if the VA were to accept the veteran's deed in lieu of foreclosure, the veteran automatically would be released from his or her debt to the VA, including any amount which exceeded the value of the property. The VA, therefore, has been reluctant to accept such deeds, and, according to GAO data, acquired only 6 percent of foreclosed properties by the means during fiscal year 1986.

In written testimony for the committee's June 17 hearing, the VA stated that it encourages lenders to pursue voluntary conveyances. However, in States with antideficiency statutes, if the veteran's debt exceeds the value of the property and it appears the veteran would be able to repay the debt, the VA does not consider voluntary conveyance appropriate because it would extinguish a debt that the VA might subsequently be able to collect.

Mr. President, conveyance of the property securing a VA-guaranteed loan by a voluntary deed in lieu of foreclosure is an appropriate means of avoiding costs for both the VA and the veteran in many cases. In some cases, of course—for example, where a default might be cured—the VA should take other steps, such as financial counseling, before accepting such a deed. In addition, S. 1801 would not require that the VA acquire property on which it would otherwise have paid the guaranty in accordance with the no-bid formula.

Since S. 1801 would enable the VA to accept a deed in lieu of foreclosure without extinguishing the veteran's remaining debt, I believe that it would not be fair for veteran to incur a penalty—in the form of an increased debt to the VA—as a result of the VA's refusal to accept, in circumstances where it would be appropriate, the veteran's timely offer of a voluntary deed in lieu of foreclosure. Accordingly, the costs—including the costs of legal proceedings—of subsequent foreclosure proceedings would not be included in calculating the veteran's debt to the VA in such cases.

ASSUMPTIONS OF VA-GUARANTEED LOANS

Section 10 of S. 1801 would amend sections 1817 and 1829 of title 38 to require generally that, before a VA-guaranteed loan could be assumed by the buyer of a veteran's home, the creditworthiness of the assumptor be established and the assumptor must pay a 1-percent fee. Sale of the property without establishing such creditworthiness would cause the loan to become due and payable in full.

Under current law, there are no restrictions regarding the assumption of VA-guaranteed loans. In contrast to conventional loans, which generally cannot be assumed, the purchaser of the veteran's home may assume the veteran's loan without undergoing a credit check or meeting any underwriting criteria. Unlike the original veteran borrower, such a purchaser also does not have to pay any origination or processing fee.

Mr. President, the free assumability of low-rate VA-guaranteed loans has made it easier for veterans to sell their homes, which may have helped avoid veterans' defaults in certain circumstances. Unfortunately, there are also certain disadvantages associated with the easy assumability of VA-guaranteed loans. The veteran—whose creditworthiness already has been approved—generally remains liable for the loan after it has been assumed, and often bears the responsibility for repayment if there is a default on the loan. In some cases, the assumability feature of VA-guaranteed loans has enabled persons to buy a home even though their creditworthiness would not otherwise allow them to achieve homeownship. Such persons may thus eventually default on the loan—doing so at the expense of the veteran and the VA. In fiscal year 1986, 14 percent—approximately 3,700—of the foreclosures on properties secured by VA-guaranteed loans were on properties secured by assumed loans. Easy assumability also has fostered abuses such as equity skimming.

S. 1801 balances the concerns of protecting the LGRF and the veteran from defaults on assumed loans against the interest in minimizing delay and expense in processing applications for assumptions by authorizing approved lenders to perform and approve credit checks on assumptors, as they do on veterans, and requiring the VA to establish regulations to ensure the timely processing of applications for acceptance of assumptions and to limit the fees which lenders would be permitted to charge for processing applications for assumptions.

Section 10 would require the VA or an approved lender to make a creditworthiness determination on the buyer, using the same standards as are used to evaluate the creditworthiness of a veteran applying for a guaranteed loan. If the buyer is found creditworthy, the veteran would automatically be released from liability to the VA, unless the Administrator determines this would not be in the interest of the

solvency or stability of the LGRF—such as in a case where the assumptor was only marginally creditworthy. Alternatively, this section would provide that the veteran and the assumptor could request that, instead of the credit check, the veteran and the buyer be made jointly and severally liable for the loan. In such a case, if, after 5 years, a foreclosure or comparable proceeding has not been completed or is not pending the veteran automatically would be released from liability.

The veteran thus could determine whether he or she will not be released from liability to the VA, at least initially, and thus accept the risk of a possible default by an unapproved assumptor by remaining liable on the loan—but only as a result of a positive election after full written disclosure to the veteran by the VA or approved lender regarding his or her rights and liabilities.

Mr. President, I anticipate that, in most cases, the veteran would pursue the option of being released from liability to the VA. However, where, for example, the additional expense and delay—however minimal—of the credit check might cause the sale to fall through, or where the veteran had a personal relationship with the buyer and wanted to assist the buyer in acquiring a home—in a manner akin to cosigning a loan—the veteran could exercise the option of facilitating the purchase by agreeing to become jointly and severally liable with the assumptor on the loan. This would provide protection for the LGRF equivalent to requiring that the credit of the assumptor be approved, since the veteran's credit would already have been approved by the original lender or the VA.

Once the creditworthiness of the jointly liable assumptor has been established through 5 years of payments, the veteran automatically would be released from liability to the VA.

Mr. President, by virtue of the Cranston-Murkowski floor amendment, the creditworthiness-determination requirement and the alternative joint-liability procedure would be made applicable to subsequent assumptors of the loan after the initial transaction.

Loan Fee on Assumptions: In light of the value to the assumptor of the VA's continuing to guarantee the loan following the sale, S. 1801 would impose a fee on assumptors—0.5 percent of the loan balance—which would generate revenues for the LGRF without directly increasing fees imposed on veterans.

At the committee's July 31, markup, ranking minority member MURKOWSKI proposed an amendment to increase the proposed 0.5-percent fee to 1 percent. The committee voted 6 to 5 to defeat the amendment.

Although I recognize the equitability of the arguments for making the assumptor's fee the same as the fee veterans pay and the need for increasing LGRF income, other factors strongly indicate to me and the majority of the committee that a 0.5-percent fee would be more appropriate at this time.

First, the extent to which such a fee might hamper veterans in their ability to sell their homes by negating some of the advantages of assuming a VA-guaranteed loan is unclear.

Second, the cost of the fee would likely be shared or even absorbed in some cases by the veteran-seller through the general negotiations over the price of the property.

Third, where a veteran is in default on a loan—particularly in the first year of the loan, when little equity has been built up in the property and the amount of the loan may equal the value of the property—the ability to sell the property quickly, with minimum costs, could be a crucial factor in turning a potential foreclosure into a sale.

DOWNPAYMENT ON MANUFACTURED HOME LOANS

Mr. President, section 11 of S. 1801 would amend section 1819(e)(4) of title 38 to limit loans guaranteed for the purchase of a manufactured home to 95 percent of the value of the home.

Currently, Federal law requires no downpayment on VA-guaranteed manufactured home loans. However, the default rate on such loans is much higher than it is for conventional VA-guaranteed home loans. In addition, manufactured housing generally experiences significant depreciation in the first few years of ownership, reducing the value of the property securing the loan. In fiscal year 1986, the average loss to the VA per defaulted loan for a conventional home was 18 percent of the average loan amount, while the average loan for a manufactured home was 37 percent of the average loan amount.

Manufactured home loans generally are made to veterans at the lower end of the income scale—those veterans who need the home loan guaranty program the most. I am deeply concerned that we ensure that such loan remain available to those veterans, and certainly intend to do so. However, we cannot ignore the costs—to both the program and the veteran—of increasing default rates on manufactured housing. I do not believe that veterans are well served when they receive loans as to which a substantial likelihood of default and foreclosure exists.

Accordingly, S. 1801 would require not less than a 5-percent downpayment for loans made to purchase a manufactured home. I do not believe that a 5-percent downpayment would significantly reduce access of veterans or servicemembers to home ownership. A downpayment should give veteran homebuyers an equity interest in their homes, which experience shows reduces the likelihood of default.

CONTRACT SERVICES PAID FROM THE LGRF

Section 12 of S. 1801 would amend section 1824 of title 38 to expand the VA's authority to pay from the LGRF loan guaranty program administrative expenses for supplementary contractual services and equipment purchases not otherwise authorized to be paid from the LGRF when the Administrator makes a finding that such supplementary contracting and equipment are in the best interest of the long-term stability and solvency of the LGRF. In each fiscal year, there would be available for these purchases the amounts collected by reason of the increase, proposed in section 7, from 1 to 2.5 percent in the fee charged for vendee loans and the new 0.5-percent fee on assumptions of VA-guaranteed loans proposed in section 10, plus in fiscal years 1988 and 1989 $2 million, for a total of not to exceed $15 million in any fiscal year.

Staffing shortages have severely hampered the VA's ability to provide many loan guaranty program services on an adequate and timely basis. Between fiscal years 1984 and 1987, the VA estimates that the number of VA loan originators increased 74.9 percent, from 251,588 to 440,000; the number of defaults on VA-guaranteed loans increased 22.9 percent, from 158,387 to approximately 194,000; the number of foreclosures on VA-guaranteed loans increased 49.1 percent, from 28,036 to 41,802; and the number of properties which the VA acquired increased 34.1 percent, from 22,817 to 30,600. Despite this tremendous increase in the volume of activity in the Home Loan Program, the number of FTEE in the program rose by only 1.6 percent—from 2,031 to 2,063—over these 4 fiscal years. Not surprisingly, the provision of discretionary services has at times been abbreviated or discontinued, regardless of their cost-effectiveness or long-term impact on the program.

Mr. President, I believe that permitting the Administrator to use the LGRF to pay for certain additional administrative costs in addition to fee-basis appraisers and broker's commissions and for certain supplemental acquisitions of equipment would allow for a more consistent, comprehensive, and cost-effective provision of services in the Home Loan Program.

LGRF funds could be so utilized only where the Administrator finds that that would be in the interest of the long-term solvency and stability of the LGRF. This would be the case where the short-term costs of contracting for the additional services are expected to generate long-term savings which would exceed the cost of such personnel.

The supplemental services which could be contracted and paid for from the LGRF would include monitoring and review appraisal reports, personal loan servicing, on-site audits of approved lenders, marketing of VA foreclosed properties, and preparation of closing documents. By making such funds available only for supplemental services and equipment—defined as such services and equipment which were not available during, or are to be provided at a level in excess of what is provided for, fiscal year 1987—the expansion of authority to use revenues in the LGRF could not be used to offset any reduction in or reassignment of loan guaranty program FTEE or equipment which would otherwise be provided.

Section 13 would amend section 1829(c) of title 38 to extend for 2 years, until September 30, 1989, the 1-percent fee which is charged all veterans, other than those with compensable service-connected disabilities, obtaining VA-guaranteed or direct VA home loans and all persons obtaining VA loans to finance their purchase of a property from the VA. The requirement for the fee was enacted in section 406 of the Omnibus Reconciliation Act of 1982—Public Law 97-253.

Mr. President, although I would strongly prefer not to impose any fee on VA home loans, I believe that in light of the significant financial problems now facing the LGRF, the imposition of the fee, with the option of financing it along with the loan principal, is a modest and not unreasonable burden to impose on veterans using the Home Loan Program.

The fee was originally enacted for a 3-year period ending September 30, 1985. That date was extended by Public Law 98-369 to September 30, 1987, and by Public Law 100-136 through November 15, 1987.

Cost savings of $269,100,000 resulting from the continuation of the loan fee have been assumed for fiscal year 1988 in the concurrent resolution on the budget for fiscal year 1988—H. Con. Res. 93—and are included in the baseline figures underlying the congressional budget. Accordingly, failure to extend the fee would significantly increase the difficulties Congress faces in meeting its budget target for fiscal year 1988 and subsequent fiscal years.

Mr. President, although I reluctantly support continuance of a 1-percent fee, I must emphatically reject the administration's proposal to raise the fee to 2.5 percent. This program is a benefits program and should not have to be self-sustaining or fully underwritten by our Nation's veterans. I intend, over the 2-year extension of the fee, to work to develop other means to address the long-term solvency requirements of the LGRF—some of which are provided for in S. 1801.

LENDER REVIEW OF APPRAISALS

Section 14 of S. 1801 would amend sections 1831 and 1810(b) of title 38 to permit lenders who are authorized to make VA-guaranteed loans on an automatic basis to determine directly, after ordering the appraisal, the reasonable value of the property securing the loan.

Under current law, a VA-designated appraiser is selected by the VA—from a list on a rotating basis—to appraise the property. Based on the appraiser's report, the VA then gives the lender a certificate of reasonable value for the property which establishes a limit on the amount the VA will guarantee for a loan secured by the property.

Staffing shortages at VA regional offices have increased the processing time for obtaining guaranteed loans, in some cases causing purchase agreements to fall through.

In an effort to help remedy this problem, S. 1801 would allow the VA to authorize the lender making a loan to determine the reasonable value of the property. This authority would be limited to lenders authorized to guaranty loans on an automatic basis under section 1802(d). The appraiser would submit the appraisal report—prepared by an appraiser selected on the same rotating basis as under current law—directly to the lender, which would then review it and furnish a copy to the concerned veteran and the VA. If the veteran believes the appraisal is not accurate, the veteran could—as under current law—obtain another appraisal, with the cost possibly shared with the seller.

In order to protect against potential fraud and abuse, the VA would be required to establish, through the expanded authority in section 12 of S. 1801 to provide for supplementary contractual services from the LGRF, a system to monitor and review, on a spotcheck basis, the appraisal determinations of lenders and provide oversight and feedback to the lenders.

In those instances where the authority for lender review of an appraisal is not used, the appraisal, as under current law, would be ordered by the VA and submitted to it, the VA would determine the property's reasonable value and notify the concerned veteran of its determination, and the determination would be provided to the lending institution upon request.

The existing authority for processing loan applications on an automatic basis has made the best use of the VA's resources by allowing the lender to process routine loans under VA oversight. Lender review of appraisals would provide the same benefit to the appraisal process.

MARKETING VA-ACQUIRED FORECLOSED PROPERTIES

Section 15 of S. 1801 would amend section 1832 of title 38 to require the VA to list for sale with real estate brokers all properties acquired as a result of a default on a VA-guaranteed loan under arrangements the VA determines to be the most appropriate and cost effective.

The VA's sale of 27,841 foreclosed properties in fiscal year 1986 would have resulted in a reduction in its inventory of such properties if property acquisitions in 3 economically depressed areas—Denver, Muskogee, and Houston—were excluded. Nevertheless, the VA's inventory continues to exceed 21,000, which is far in excess of the number of homes in the VA inventory prior to the 1980's. The inability of the VA to market properties successfully has led to reliance on numerous auction sales of hard-to-sell VA properties. These auctions often impose substantial losses on the LGRF and may add to the factors that depress the real estate market in the communities concerned. I am concerned that the VA may have been too quick to rely on these auctions. Auctions should be used only as a clear last resort. Creative marketing arrangements would be a far preferable approach. I intend to monitor this situation very closely in the months and year ahead.

Listing properties with, and utilizing the marketing services and expertise of, private-sector real estate sales professionals could result in faster sales of VA-acquired properties, thereby reducing the cost to the LGRF of the VA's property inventory and providing the LGRF with additional funds. It is intended that listing properties for sale with a real estate broker will provide the broker with incentives to market the properties actively.

The requirement that listing be under conditions the Administrator determines to be appropriate and cost effective is intended to allow the VA the flexibility to market properties through other means if listing alone would clearly not be cost-effective.

I also note that the committee report encourages the VA to utilize area management brokers [AMB] to improve the disposal of VA properties. AMB's—whom the VA already uses on a limited basis—are licensed real estate brokers who, on the basis of the VA's instructions, list and manage VA properties for sale in their areas. An AMB provides a centralized source of listings and related information for other brokers who market and sell the properties in the same area. ABM's generally are paid on a fee rather than commission basis, since they themselves do not sell the property.

COST SAVINGS

The CBO estimates that the savings resulting from the enactment of the committee bill during fiscal year 1988 would be $190 million in budget authority and $181 million in outlays in fiscal year 1988, and that savings from

fiscal year 1988 through fiscal year 1992 would total $605 million in budget authority and $563 million in outlays.

CONCLUSION

I intend to work closely with the leadership on the House Veterans' Affairs Committee to reach agreement on a home loan bill as quickly as possible, and I pledge to take all steps necessary to ensure that a veteran's home loan bill is on the President's desk by November 15 in order to avoid another expiration of the 1-percent loan fee.

Mr. President, I want to take this opportunity again to express my appreciation to our committee's ranking minority member, Senator MURKOWSKI, and the very effective minority staff—Tony Principi, Annie Rothgeb, Laura Stepovich, and Chris Yoder—for their fine efforts and cooperation on this legislation.

Of course, I also extend thanks to the committee's majority staff for their excellent work on this bill—Charlotte Hughes, Claudia Kashin, Jennifer Loporcaro, Loretta McMillan, Ingrid Post, Lawson Bader, Iris Coblitz, Ed Scott, Jon Steinberg, and Jane Wasman—and our fine editorial director, Roy Smith.

I urge all of my colleagues to support this important measure. Each element of this bill has an important role to play in ensuring that home loan guaranty benefits continue to help our veterans reach their dreams of homeownership.

STATEMENT OF MR. MURKOWSKI ON S. 1801

Mr. MURKOWSKI. Mr. President, I enthusiastically rise to ask my colleagues to join me, and the distinguished chairman of the Committee on Veterans' Affairs, in support of this historic legislation—the Veterans' Home Loan Program Improvements Act of 1987. This act will make meaningful improvements and reforms in the Veterans' Home Loan Guaranty Program by improving loan underwriting, assumptions, servicing, appraisals, property marketing, and other aspects of this program.

The Veterans' Home Loan Guaranty Program may be one of the most important and significant Government programs since the Homestead Act of 1864. I ask my colleagues to remember the Nation's housing policy before World War II. We didn't have one. Home ownership was usually a dream for nonfarm families, unless the family was rich. Mortgage lending, when it was available, required large downpayments which were often difficult to accumulate.

For millions of Americans that situation changed in 1944 with the enactment of the Servicemen's Readjustment Act, popularly known as the GI bill. The Home Loan Guaranty provisions of that act gave veterans returning from World War II the means to become homeowners, and America has never been the same. Those veterans led the transformation of America from a nation of renters to a nation of homeowners.

The demand for housing sparked by the Veterans' Home Loan Guaranty Program has led to an enormous homebuilding industry and a real estate finance and sales industry. Home construction has fueled the demand for construction materials, appliances, and furniture. Since 1944, the VA has guaranteed over 12 million home loans with a value of over $270 billion.

The Veterans' Home Loan Program is no longer the only program providing the means to home ownership. The success of the Veterans' Home Loan Guaranty Program has led to other programs available to other Americans, in both the public and private sectors, to encourage and facilitate home ownership. However, the VA Home Loan Program remains a critical part of the Nation's housing policy. All Americans, and especially those Americans who answer the Nation's call to service in the Armed Forces, have an interest in the continued good health of this program.

Nevertheless, Mr. President, it is with deep concern that I note the Veterans' Home Loan Guaranty Program displays the symptoms of serious problems.

Year after year, the Congress must appropriate hundreds of millions of dollars to bail out the Loan Guaranty Revolving Fund through which the program operates.

In the fifth year of an economic expansion, the VA is still acquiring record numbers of foreclosed homes. The VA currently has an inventory of almost 22,000 such homes. Through August of this year alone, the VA has acquired 32,425 properties and has disposed of only 31,001. This has increased the inventory by almost 1,500 homes.

These are symptoms of a program with problems. Some of these problems are inherent in our society and economy and beyond the control of the Veterans' Administration. However, I believe other problems can be reduced through congressional and VA actions. For example:

We have found that underwriting problems have lead to loans guaranteed for, or made to, individuals with poor prospects of repayment.

These problems in underwriting can be addressed by policies to ensure loans are made to creditworthy buyers and that some of the risk of underwriting decisions are borne by those who make those decisions.

We have found that properties are sometimes appraised for more than market value.

Such problems in appraisal values can be addressed by imposing standards on those who perform appraisals and on the appraisals they produce.

We have found that some veterans receive inadequate assistance when they face default, and that enormous costs are imposed on the VA by delays in processing foreclosures.

The costs of defaulting loans can be reduced by improving the assistance and advice provided to veteran homebuyers when they get into financial trouble and by minimizing the delay and expense of foreclosure if a default is unavoidable.

We have found that the VA frequently has problems marketing and selling the properties it acquires through foreclosure.

These difficulties in marketing VA acquired properties can be reduced by harnessing the energy and expertise of the private sector real estate industry.

Mr. President, the legislation before us today represents the fruits of intense interest and work by members of the Committee on Veterans Affairs on both sides of the aisle. It has the benefit of extensive discussion and examination of ideas, policies, and concepts by members and individuals of many points of view.

Many of the provisions in this bill can be traced to provisions in S. 1778, which I introduced in 1985, when I began my pursuit of reform for this important program. Other provisions owe their origin to the ideas of the distinguished chairman of the Committee, Senator CRANSTON. I believe the legislation before us today is a historic measure which will begin to mend the problems in a program which is far too important to be allowed to weaken because of problems which have developed as the program and our economy have evolved over the last 43 years.

The legislation before us today will, if enacted, provide for meaningful reform in:

Appraisals; loan servicing; assumptions; refinancing; marketing; the financial solvency of the VA Home Loan Guaranty Program; and other areas of program administration.

The legislation before us today will, if enacted, take an important step in protecting and preserving the financial health of this important program. This legislation is important to current and future veterans of our Armed Forces, and it is important to the industries those veterans will turn to in order to meet their needs for housing.

I urge my colleagues to join me in supporting S. 1801 as amended by the amendment proposed by Senator CRANSTON and myself. This amendment has two provisions:

The first would extend the standards proposed for assumption of VA loans to subsequent assumptions. That is, if a VA guaranteed loan is assumed, and the individual who assumed the loan subsequently sells the house by

means of an assumption of the loan, the new buyer would also have to meet the standards proposed for the assumption of VA guaranteed loans. The subsequent buyer enjoys the benefits of a VA guaranteed loan and should have to meet the same standards of creditworthiness and pay the same fees as others who enjoy the benefits of VA guaranteed loans. I consider this provision to be little more than a correction of a drafting oversight.

The second provision of the amendment would repeal a provision recently enacted as part of Public Law 100-136. That act, derived from S. 1691, which the Senate intended to be a temporary extension of expiring authorities, was amended by the House to include a virtual prohibition on the sale of VA loans without recourse. The Senate and the President reluctantly acquiesced to this last minute prohibition because the alternative was to allow the entire bill to die—including the temporary extention of the home loan guaranty loan origination fee which the bill contained. This would have created financial disaster for this extremely important program.

However, I believe a blanket and permanent prohibition of without-recourse sales is an unwise restriction on the ability of the VA to manage this program. In addition, the sale of loans with recourse is scored as borrowing from the public by the Congressional Budget Office. This means this provision of law, unless repealed, increases the sequester base by over $600 million and makes it even more difficult for the Congress to meet its deficit reduction target. At the time the Senate accepted S. 1691, as amended by the House, I made a commitment to the Senate and the President to seek the repeal of the provision barring without recourse sale of VA loans. I urge the Senate to join with me and Senator CRANSTON in support of our amendment and of S. 1801.

The bill (H.R. 2672), as amended, was passed.

The title was amended, so as to read:

To amend title 38, United States Code, to increase the maximum Veterans' Administration home loan guaranty, reduce Veterans' Administration-guaranteed loan defaults and foreclosures, and make other improvements in the Veterans' Administration home loan program, and for other purposes

## TREATMENT OF CLAIMS FOR CERTAIN RETIREE BENEFITS OF FORMER EMPLOYEES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 376, H.R. 2969, dealing with employees retirement benefits; that an amendment on behalf of Mr. METZENBAUM in the nature of a substitute be considered and agreed to; a motion to reconsider laid on the table; the bill to be advanced to third reading; and that the bill be passed and a motion to reconsider laid on the table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The text of the amendment (No. 1115) appears in today's RECORD under "Amendments Submitted.")

## SECURITIES AND EXCHANGE COMMISSION AUTHORIZATION ACT

Mr. BYRD. Mr. President, on behalf of Mr. RIEGLE, I ask that the chair lay before the Senate a message from the House on S. 1452.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the bill from the Senate (S. 1452) entitled "An Act to amend the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to make certain technical, clarifying, and conforming amendments, to authorize appropriations to the Securities and Exchange Commission, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

*SECTION 1. SHORT TITLE.*

*This Act may be cited as the "Securities and Exchange Commission Authorization Act of 1987".*

*SEC. 2. AUTHORIZATION OF AND LIMITATIONS ON APPROPRIATIONS.*

*Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:*

*"AUTHORIZATION OF APPROPRIATIONS*

*"SEC. 35. (a) There are hereby authorized to be appropriated to carry out the functions, powers, and duties of the Commission (other than the functions, powers, and duties described in subsection (b))—*

*"(1) $133,900,000 for fiscal year 1988; and*

*"(2) $154,000,000 for fiscal year 1989.*

*"(b) In addition to the amounts authorized by subsection (a), there are authorized to be appropriated to the Commission for the purpose of funding a contract for the establishment and operation of the electronic data gathering, analysis, and retrieval ('EDGAR') system—*

*"(1) $20,000,000 for fiscal year 1988; and*

*"(2) subject to section 35A(a)(2) of this title, $15,000,000 for fiscal year 1989.".*

*SEC. 3. REQUIREMENTS FOR THE EDGAR SYSTEM.*

*The Securities Exchange Act of 1934 is amended by inserting after section 35 the following new section:*

*"REQUIREMENTS FOR THE EDGAR SYSTEM*

*"SEC. 35A. (a)(1) Of the funds appropriated to the Commission pursuant to section 35 of this title for fiscal year 1988 which are available for establishment or operation of the electronic data gathering, analysis, and retrieval ('EDGAR') system, the Commission shall reserve $15,000,000. None of the funds that are so reserved may be obligated or expended unless the Commission has made the certification required by subsection (c) of this section.*

*"(2) Notwithstanding section 35(b) of this title, no funds are authorized to be appropriated for fiscal year 1989, and no such funds may be obligated or expended, for the establishment or operation of the EDGAR system unless the Commission has—*

*"(A) filed each report required during fiscal year 1988 by subsection (b) of this section; and*

*"(B) made the certification required by subsection (c) of this section.*

*"(3) Amounts appropriated to the Commission for the EDGAR contract shall be the exclusive source of funds for the procurement and operation of the systems created under that contract by or on behalf of the Securities and Exchange Commission—*

*"(A) for the receipt of filings under Federal securities laws, and*

*"(B) for the automated acceptance and review of the filings and information derived from such filings.*

*"(b) The Commission shall submit a report to the Committees on Banking, Housing, and Urban Affairs and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Operations of the House of Representatives on the status of EDGAR development, implementation, and progress at six-month intervals beginning December 31, 1987, and ending at the close of 1990 (unless otherwise extended by the Congress). Such report shall include the following:*

*"(1) The overall progress and status of the project, including achievement of significant milestones and current project schedule.*

*"(2) The results of Commission efforts to test new or revised technical solutions for key EDGAR functions. In particular, the following functions shall be addressed and the indicated information provided:*

*"(A) Automating receipt and acceptance processing, including—*

*"(i) development and testing progress and results;*

*"(ii) actual versus estimated development cost; and*

*"(iii) actual effect of this function on Commission staff needs to assist filers.*

*"(B) Data tagging (identifying financial data for analysis by EDGAR), including—*

*"(i) description of the approach selected, identifying the types of financial data to be tagged and the calculations to be performed;*

*"(ii) comments by the filer population on the approach selected;*

*"(iii) the results of testing this approach, including information on the number of filers taking part in the test and their representativeness of the overall filer population;*

*"(iv) actual versus estimated development cost; and*

*"(v) effect of implementing this function on EDGAR benefits.*

*"(C) Searching text for keywords, including—*

*"(i) the technical approach adopted for this function;*

*"(ii) development and testing progress and results;*

*"(iii) data storage requirements and search response times as compared to EDGAR pilot system experience;*

*"(iv) actual versus estimated development cost; and*

*"(v) effect of implementing this function on EDGAR benefits.*

*"(3) An update of cost information for the receipt, acceptance and review, and dissemination portions of the system including a comparison of actual costs with original estimated costs and revised estimates of total*

*system cost and total funding needs for the contract.*

*"(4) The status of Commission efforts to obtain and maintain staff with the proper contractual, managerial, and technical expertise to oversee the EDGAR project.*

*"(5) The fees, revenues, costs, and profits obtained or incurred by the contractor as a result of the required dissemination of information from the system to the public under the EDGAR contract, except that the information required under this paragraph (A) need be obtained from the contractor no more frequently than once each year, and (B) may be submitted to the Congress as a separate confidential document.*

*"(6) Such other information or recommendations as the Commission considers appropriate.*

*"(c) On or before the date the Commission enters into the contract for the EDGAR system, the Commission shall submit to the Committees on Banking, Housing, and Urban Affairs and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Operations of the House of Representatives a certification by the Commission—*

*"(1) of the total contract costs to the Federal Government of the EDGAR system for each of the 3 succeeding fiscal years;*

*"(2) that the Commission has analyzed the quantitative and qualitative benefits to be obtained by the establishment and operation of the system and has determined that such benefits justify the costs certified pursuant to paragraph (1);*

*"(3) that (A) the contract requires the contractor to establish a schedule for the implementation of the system; (B) the Commission has reviewed and approved that schedule; and (C) the contract contains adequate assurances of contractor compliance with that schedule;*

*"(4) of the capabilities which the system is intended to provide and of the competence of the contractor and of Commission personnel to implement those capabilities; and*

*"(5) that mandatory filings from a significant test group of registrants will be received and reviewed by the Commission for a period of at least six months before the adoption of any rule requiring mandatory filing by all registrants.*

*"(d) The Commission, by rule or regulation—*

*"(1) shall provide that any information in the EDGAR system that is required to be disseminated by the contractor—*

*"(A) may be sold or disseminated by the contractor only pursuant to a uniform schedule of fees prescribed by the Commission;*

*"(B) may be obtained by a purchaser by direct interconnection with the EDGAR system;*

*"(C) shall be equally available on equal terms to all persons; and*

*"(D) may be used, resold, or redisseminated by any person who has lawfully obtained such information without restriction and without payment of additional fees or royalties; and*

*"(2) shall require that persons, or classes of persons, required to make filings with the Commission submit such filings in a form and manner suitable for entry into the EDGAR system and shall specify the date that such requirement is effective with respect to that person or class; except that the Commission may exempt persons or classes of persons, or filings or classes of filings, from such rules or regulations in order to prevent hardships or to avoid imposing unreasonable burdens or as otherwise may be necessary or appropriate; and*

*"(3) shall require all persons who make any filing with the Commission, in addition to complying with such other rules concerning the form and manner of filing as the Commission may prescribe, to submit such filings in written or printed form—*

*"(A) for a period of at least one year after the effective date specified for such person or class under paragraph (2); or*

*"(B) for a shorter period if the Commission determines that the EDGAR system (i) is reliable, (ii) provides a suitable alternative to such written and printed filings, and (iii) assures that the provision of information through the EDGAR system is as effective and efficient for filers, users, and disseminators as provision of such information in written or printed form.*

*"(e) For the purposes of carrying out its responsibilities under subsection (d)(3) of this section, the Commission shall consult with representatives of persons filing, disseminating, and using information contained in filings with the Commission.".*

*SEC. 4. TECHNICAL AMENDMENTS RELATING TO THE GOVERNMENT SECURITIES ACT OF 1986*

*(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—(1) Section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)(1)(B)(i)) is amended by striking out "When" and inserting "When such".*

*(2) Section 17(f)(1)(A) of such Act (15 U.S.C. 78q(f)(1)(A)) is amended by striking out "government securities," and inserting "securities issued pursuant to chapter 31 of title 31, United States Code,".*

*(b) AMENDMENT TO THE SECURITIES INVESTOR PROTECTION ACT OF 1970.—Section 16(12) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78111(12)) is amended by inserting before the period at the end thereof the following: "other than a government securities broker or government securities dealer registered under section 15C(a)(1)(A) of the 1934 Act".*

Amend the title so as to read: "An Act to extend and amend the authorization of appropriations for the Securities and Exchange Commission, and for other purposes.".

AMENDMENT NO. 1116

Mr. BYRD. Mr. President, I move that the Senate concur in the amendments of the House with a further amendment on behalf of Mr. RIEGLE, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], on behalf of Mr. RIEGLE, proposes an amendment numbered 1116.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment (No. 1116) appears in today's RECORD under "Amendments Submitted.")

Mr. RIEGLE. Mr. President, last June the Senate acted by unanimous consent to reauthorize the SEC budget as reported by the Senate Banking Committee. The Senate authorized the entire budget increase requested by the SEC and, further, restored cuts to the agency budget which were demanded by the administration before the SEC was permitted to submit its budget request to Congress. In addition, the Senate adopted technical amendments to the securities laws as requested by the SEC.

In September the House returned S. 1452 with a request that the Senate concur in their amendment. The House acted to substitute a new provision for S. 1452 which would reauthorize the SEC at the level requested by the agency without restoring the funds cut by the administration. The House also added reporting and certification requirements on the SEC regarding the ongoing development of the Electronic Data Gathering Analysis and Retrieval project ("Edgar".)

I urge the Senate to adopt this amendment to S. 1452 which incorporates the House Edgar provisions, restores the Senate funding level, and retains the technical amendments requested by the SEC. I believe that this compromise amendment will be acceptable to the House.

Recent market events have clearly demonstrated the need for the higher funding as approved by the Senate. In fact, I have urged the appropriations conferees to consider even further supplementing the SEC budget now to bolster the agency's resources in responding to the crisis in the financial markets. As the Banking Committee noted in its report on S. 1452, and recent events have corroborated, the SEC's resources have not kept pace with the recent tremendous increases in volume and complexity of the securities markets. The Senate should approve this amendment reauthorizing the SEC with a long overdue increase and the Congress should seriously consider appropriating additional funds to the agency to meet the demands of the current situation in the markets.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BYRD. I move to reconsider the vote by which the motion was agreed to.

Mr. EVANS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I move to concur in the House amendments to the title.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. EVANS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

91-059 O-89-3 (Pt. 22)

## CRIMINAL FINE IMPROVEMENTS ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the House bill, H.R. 3483, on sentencing reform just received from the House be called up.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3483) to amend title 18, United States Code, to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes.

Mr. BYRD. Mr. President, I ask unanimous consent that the substitute amendment on behalf of Senators BIDEN, THURMOND, KENNEDY, and HATCH be agreed to; the motion to reconsider laid on the table; the bill advanced to third reading, passed, and a motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The text of the amendment (No. 1117) appears in today's RECORD under "Amendments Submitted.")

## BILL PLACED ON CALENDAR—H.R. 3457

Mr. BYRD. Mr. President, I ask unanimous consent to place on the calendar H.R. 3457, a bill dealing with financial protection for poultry growers just received from the House of Representatives.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, that completes the business for today. I want to thank the distinguished Senator from Washington, Mr. EVANS, the acting Republican leader for his courtesy, his cooperation, and for his statesmanship.

## PASSING OF WOODY HERMAN

Mr. KASTEN. Mr. President, I rise today to express the sorrow of the State of Wisconsin, and of music lovers all over America and the world, about the passing of jazz legend Woody Herman.

Woody Herman's career proves the immortality of good music. When music strikes a chord deep in the spirit of its listeners it remains forever young even as the musicians playing it grow old. Woody Herman knew that as long as the music he made could be passed on to a younger generation, the music would not die with him.

I have heard Woody say he really likes the fact that most of the members of his band are young, because he felt they kept him young. I would like to respectfully disagree with Woody on that point. They did not keep him young. It was his music that kept all of them—and the rest of us who enjoyed it—young. And I would be willing to predict that the records he made will keep on doing that for decades to come.

Woody Herman was part of an extraordinary group of Wisconsin artists who gave us what has come to be known as the golden age of Wisconsin arts. Early in this century, Wisconsin gave birth to numerous figures destined to have enormous influence on American arts and popular culture, figures like Spencer Tracy, Alfred Lunt, Frederic March, Orson Wells, and Pat O'Brien. Woody Herman stands out even in that select company.

My wife Eva and I were with Woody Herman last year at the 10th Anniversary Celebration for the Birch Creek Music Center in Door County, WI. I remember that what impressed both of us the most about Woody was the hope he held out about what old age could mean. Here was a man of 73 embodying the spirit of swing music—and infecting the rest of us with his energy and sense of humor.

The lesson we could all learn from Woody is that if you have the right attitude, getting older means getting better.

Woody once observed: "Music is a great escape. As long as you're playing, nobody can get to you—about anything." Woody Herman knew that music—like all true art—helps us transcend ourselves and reach out to the eternal. That is why he and his band, the Thundering Herd, made their music. And that is why people listened to it.

The people who loved Woody's music did not show their appreciation just by buying his albums. When Woody was facing bankruptcy and eviction a couple of years ago, his friends and fans rallied around him, raising thousands of dollars to pay his debts.

They did this because they loved him. They still loved him, especially in his hometown of Milwaukee.

Mr. President, I rise to express Wisconsin's gratitude for and pride in this great man and great musician, Woody Herman.

## DEFICIT REDUCTION

Mr. LEVIN. Mr. President, when a banner was run up the flag pole to signal the willingness of the President and the Congress to enter into budget negotiations, emblazoned across it were the words, "Everything is on the table, except Social Security." If these negotiations proceed in that spirit, there is a good chance for success. That's why it was disturbing to see 32 of our colleagues vote only 2 days after the negotiations began for a sense of the Senate resolution which was contrary to the President's own statements and which would have effectively taken any revenues off of the negotiating table.

This vote was all the more disturbing in light of the growing impression that $23 billion in deficit reduction for 1988 may not be adequate to address the fundamental budgetary problems confronting us and to instill confidence in the markets. In this environment, sweeping revenues off the table would not be the responsible thing to do. If increased revenues, along with spending cuts, are essential for these economic summit negotiations to produce a credible deficit reduction plan of $23 billion, and I believe they are, then they are even more important for a more comprehensive plan.

Any realistic deficit reduction plan will include revenues as well as spending cuts. The question is which revenues. In an attempt to assure the public that there will be no general tax increase affecting average taxpayers, some budget summiteers from all sides have quickly added that they will do nothing to modify income tax rates. In doing so, they have flicked off the table a component of a deficit reduction revenue package which, if explained to the American public, would almost certainly meet with its overwhelming approval.

What should be firmly on the table is a proposal to change an illogical, inequitable and regressive feature of the new income tax rate structure which has not yet taken effect, but which is scheduled to begin in 1988. Most people, perhaps even the President, are under an impression that starting in 1988 under the new tax reform law there will only be two marginal income tax rates—15 and 28 percent. The fact is that the rate structure will be 15 percent, 28 percent, 33 percent and, believe it or not, that rate will go back down for the highest income people to 28 percent. The marginal rate is the tax rate which applies to the final dollar of income that a taxpayer earns each year.

Yes, incredible as it is to contemplate, under the new tax law in 1988 a family of four with a taxable income of $35,000 will have a 28-percent marginal rate. The same size family with a taxable income of $80,000 will have a 33-percent marginal rate. But, an identical size family with a taxable income of $200,000 will drop back to a 28-percent marginal rate.

This anomaly of the new tax law results from a tax surcharge that applies to a taxpayer's income as it increases—implicitly creating a 33-percent marginal rate—because the taxpayer gradually loses his or her eligibility for having some income taxed at the 15-percent bracket and loses the eligibility for personal exemptions. Once the 15-percent bracket and the personal exemptions have been entirely phased out, the tax surcharge disappears, and

the taxpayer's marginal rate drops back to 28 percent.

If the new law were changed so that the marginal tax rate would not drop from 33 percent back to 28 percent for the highest income taxpayers, it would not increase the tax burden of any unmarried taxpayers with taxable incomes of less than $90,000 or any married taxpayers with taxable incomes of less than $150,000. In other words, there would be no tax increase for 99 percent of the taxpayers; only the upper 1 percent would be touched. Keep in mind that for 1987, this upper 1 percent of the taxpayers have a marginal tax rate of 38.5 percent, so that a 33-percent marginal tax rate in 1988 still would represent a drop in the rate of 5 percentage points.

Although, as professor Alan Blinder of Princeton has stated, "Both honesty and equity demand that we apply the 33-percent marginal rate across the board to all high incomes," there is another reason as well. It would produce a surprisingly large revenue gain a the time when the Congress and the President are trying to formulate a deficit reduction revenue package. It has been estimated that this proposal would increase revenues by $2.4 billion in 1988 and by a total of $13.5 billion between 1988 and 1990, even if the maximum capital gains rate is kept at 28 percent. That's very close to what the Medicare tax increase proposed by the Finance Committee would raise. But, the medicare tax increase affects 8 percent of our people and the extension of the 33-percent bracket affects only 1 percent.

It would be ironic if the budget summiteers—in an attempt to avoid being erroneously perceived as legislating a general tax increase affecting average taxpayers—rejected out of hand an extension of the 33-percent bracket to our upper income taxpayers, and, instead, ended up substantially relying on a variety of alternative tax measures which would fall most heavily on those very same average taxpayers. For example, raising additional revenues by extending the telephone excise tax would affect virtually every household in the United States and would raise $1.3 billion in 1988 and $6 billion between 1988 and 1990. Doubling the tax on beer would raise $1.1 billion in 1988 and $3.5 billion between 1988 and 1990. In contrast, amending the Income Tax Code by extending the 33-percent bracket to all upper income taxpayers would raise more in revenues, advance equity, and would only affect the wealthiest 1 percent of the taxpayers.

It would be doubly ironic if the Congress and the President, in the name of the American people, chose to raise additional revenues by focusing on user fees and excise taxes instead of looking to extending the 33-percent bracket to the all upper income individuals. A nationwide poll conducted earlier this year demonstrated that the American people, by a margin of 3 to 1, would rather reduce the deficit by modifying the new income tax law as it affects the upper income taxpayers than by increasing revenues from excise taxes.

I understand that even people who may support extending 33 percent tax bracket recoil at doing it because of the President's often stated opposition to doing anything that affects income tax rates. However, the President, even with all of his communications skills, would not be able to persuade the American public that this proposal constitutes a general tax increase. Finally, no one could explain to the satisfaction of the American people the reverse Robin Hood logic that justifies maintaining an inequity from which the wealthiest among us benefit in order to pave the way for a tax increase that falls most heavily on the rest.

## VIOLENCE HAS NO PLACE IN KOREAN ELECTION

Mr. CRANSTON. Mr. President, on several previous occasions I have spoken out against the use of violence by various factions within the Korean electorate as that country struggles toward democracy. Recent unfortunate events in Korea cause me to rise again to reemphasize the importance of allowing the peaceful, democratic process to take place in an orderly manner without interference from extremists from either the right or the left.

The people of the Republic of Korea have taken further great strides toward democracy in recent weeks. On October 12, the National Assembly overwhelmingly passed a new Constitution which provides for the protection of basic human rights, eliminates emergency powers for the President, and stipulates the "observance of political neutrality by the military," along with the establishment of democratic institutions. This Constitution was formulated by both the ruling party and members of the opposition, and both sides showed remarkable perseverence and made productive compromises to achieve a Constitution for the Korean people. On October 27, the Constitution received the support of 93 percent of the Korean electorate in a national referendum. It is my deepest hope that the near-unanimity reflected by this vote will give strength and longevity to this Constitution and the new, democratic society it will create.

But violent actions in Korea also indicate that not everyone is willing to trust the peaceful workings of democracy. In Taegu last week, homemade kerosene firebombs were thrown at the car of the Democratic Justice Party's candidate Roh Tae Wu by about 20 leftist radicals trying to disrupt the peaceful political rally. Roh's campaign has been frequently confronted by other incidents of violence, including the use of tear gas grenades and Molotov cocktails by left fringe opposition.

The Korean people have been witness to a tragic magnitude of violence in their quest for democracy in this century. The struggle for democratic reforms in the past few years has been hard fought and has not taken place without violence, bloodshed, police brutality, and false imprisonment. But the new Constitution has opened up possibilities for a democratic electoral process that will allow the wishes of the Korean people to be reflected in a peaceful manner.

Violence will undermine the hard-won gains of the democratic forces.

Violence could potentially reverse the great strides toward freedom made thus far.

Democracy must be given a chance to work, and all candidates, government and opposition alike, must be given the opportunity to make their case to the Korean people in a free and fair campaign, without the fear of injury or worse. I am hopeful that those few elements of Korean society who tend to resort to violence will join with the vast majority of peace-loving Koreans to insure that the rest of the campaign and the election itself be democratic and nonviolent.

## LUPUS AWARENESS MONTH

Mr. DOLE. Mr. President, the month of October 1987 has been designated as Lupus Awareness Month, and I would like to take this time to call attention to this rather tragic disease.

What is lupus?

Despite the fact that lupus affects over 500,000 individuals in the United States and claims over 5,000 lives every year, there is little awareness among the general population of this often misdiagnosed and thus mistreated disease. Lupus is an inflammatory autoimmune disease of unknown origin, with unpredictable symptoms that vary in intensity. In her book "Lupus: Hope Through Understanding," Henrietta Aladjem explains that the typical patient comes to the doctor complaining of fatigue, low grade fevers, rashes, and achy, slightly swollen joints.

Though the disease can affect any part of the body, most patients have skin and joint involvement. Where the skin is involved, the patients must take extra precautions to protect themselves from the sun's ultraviolet rays, which can cause rashes on the exposed areas.

I had the opportunity last year to talk with Ms. Aladjem for the Lupus Foundation publication "Lupus News." It was during that conversation that I found out that lupus affects women 10 times more often then it affects men, and that it attacks women in their 20's, 30's, and 40's. This is the prime of their life when they are reaching career goals, getting married, and having children.

LUPUS FOUNDATION

The Lupus Foundation of America is dedicated to raising funds for lupus research and educating the pubic about this disease. Their goal is to address the problems of the lupus patient with understanding, compassion, and concern. Mr. President, I want to commend the Lupus Foundation of America for its work over the years, and I am hopeful that their efforts will help us solve the mystery of this dreaded disease.

## BICENTENNIAL MINUTE

OCTOBER 30, 1893: SHERMAN SILVER PURCHASE ACT REPEALED AFTER LONG FILIBUSTER

Mr. DOLE. Mr. President, 94 years ago today, on October 30, 1893, the Senate repealed the Sherman Silver Purchase Act after one of the most bitter filibusters of the 19th century. President Grover Cleveland was certain the roots of the terrible economic depression then gripping the nation lay in the decline of government credit, due to the continued purchase of silver under the Sherman Act. He called the 53d Congress into extra session in August and threatened to keep it in all summer until it repealed the Sherman Act.

When the extra session convened, the Senate Finance Committee, chaired by Daniel Voorhees of Indiana, reported the repeal legislation by a one-vote majority. As soon as the issue reached the floor on August 29, the long filibuster began, led by silverites—primarily Western Senators. One stupendous speech by Senator John P. Jones of Nevada, requiring large parts of 7 days to deliver, filled 100 pages of the CONGRESSIONAL RECORD. When, after several days, motions for cloture began to be offered by the prorepeal forces, they only evoked more stormy discussions, turning the debate away from repeal toward more fundamental freedom-of-speech issues.

Voorhees decided to resort to a continuous session to break the deadlock. After the Senate convened at 11 o'clock on the morning of October 11, it remained in unbroken session for 39 hours, until 1:45 on the morning of the 13th. But even this grueling tactic failed to break the back of the filibuster. Finally, on October 24, several antirepeal Democrats met with administration representatives strongly urging them to surrender, which they did, and the filibuster suddenly collapsed. On the evening of October 30, after a 46-day filibuster, the Sherman Act was repealed by a vote of 43 to 32. Cleveland and the gold Democrats had won but at a high price. Their party was torn in two, and the wound would be a long time healing.

## BILL BROCK

Mr. HATCH. Mr. President, our distinguished colleague BOB DOLE managed to lure from public service one of our Nation's most effective leaders and administrators when he selected Labor Secretary Bill Brock to chair his campaign for the Presidency. Bill Brock will bring to this position, or to any other project he believes in, the same integrity, commitment, and ability that he has given to President Reagan over the last 2 years as a member of the Cabinet.

Bill Brock has had a wealth of experience. He first joined President Reagan's Cabinet as the U.S. Trade Representative, but prior to that he was national chairman of the Republican Party, Senator and Congressman from Tennessee, and a businessman. In each of those roles, Bill Brock has tackled many tough policy issues ranging from equal credit opportunities for women to trade with the Japanese. He has straightened out organizational labyrinths and has positively motivated bureaucracies. And, much to his credit, he knows how to build a staff and have it work effectively.

Of course, most of us know him now as Secretary of Labor. This may be one of the thorniest jobs in Washington, but Bill Brock has handled it with aplomb. Adversaries are welcome in his office and their viewpoints are considered; they, like everyone else, know that he is honest and forthright. In a political town, where plain talk is often the exception not the rule, Bill Brock tells it like it is.

Secretary Brock has also been foresighted about many of the problems facing this country's workforce in the future. The Department's "Workforce 2000" study has forced us to look beyond the quick-fix programs we are prone to enact to policies which will address the root causes of unemployment and will help prepare our workforce for the next century. We owe, in large part, for example, our new awareness about illiteracy in America to Secretary Brock.

Finally, another thing that impresses me about Bill Brock is that he still represents a constituency of American citizens. It is clear that he listens not just to the representatives of big business or big labor; he continues to listen to individuals, small business owners, steelworkers, and our youth. I believe it is this sincere interest in the microeffects of broadly applied Federal policies that has made him so popular with both business and labor, and such an effective leader.

I congratulate our Republican leader for selecting Bill Brock to lead his campaign team, but I do regret his resignation as Secretary of Labor. As chairman of the Labor and Human Resources Committee, and now ranking member, I have enjoyed working with him; and, quite frankly, I am going to miss his counsel and wisdom greatly. He has earned our respect and admiration, and I wish him and his wife, Sandy, all the best.

## A WOMAN OF GREAT SERVICE

Mr. PROXMIRE. Mr. President, today I want to honor Kay Heyer, a constituent of mine, and a remarkable individual. Kay is a devoted mother, nurse, and community volunteer who has gone far beyond the usual in her service.

In 1980, Kay participated in a 2-month-long medical relief trip to Thailand, giving medical aid to Indochinese refugees in refugee camps there. Upon Kay's return to the Milwaukee area, she began using her talents and energy to assist the Indochinese immigrant community.

Since then, Kay has sponsored four families through her local parish's immigrant sponsorship program. Kay also provides valuable health-care information to the immigrant community in the monthly classes she teaches. This fall, she is teaching a 15-class course at a community health center.

Kay helps provide material aid to the immigrants, too. If you look in her basement, you will see the rummagesale clothing she collects for her Indochinese friends. And for 6 of the past 7 years, Kay has obtained a grant from the Sisters of St. Dominic in Racine. This money has been used to cover emergency expenses for such things as heat and food for the immigrant families.

Kay has also helped the larger community to better understand and serve the Indochinese immigrants. At presentations to Milwaukee-area emergency room staff, Kay shows slides from her experiences in Thailand, and she briefs the staff on illnesses that the immigrants may come down with.

Kay's service to the immigrant community is in addition to the other undertakings in this woman's wonderfully active life. Her duties as a mother include giving extensive care to her oldest daughter who is physically and mentally retarded. Kay also works part time providing home nursing care. And Kay has been pursuing a bachelor's degree for the past 2 years.

Kay Heyer should be an inspiration to us all. Today I salute her.

Before I conclude, Mr. President, I'd like to note that Kay is representative of millions of caring individuals who

build the ties that strengthen the health of our society. Kay and all the fine Americans like her deserve only the finest from their elected representatives. I don't think we can remind ourselves of that often enough.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Milwaukee Journal.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Milwaukee (WI) Journal, Sept. 3, 1987]

A TRIP TO ASIA TOOK HER TO THE HEART OF THE MATTER

(By Cynthia Dennis)

Some detours in life prove to be dead ends. But the one that Kay Heyer made seven years ago wasn't. Heyer's detour changed her life.

In 1980, the Wind Lake nurse was part of a group that flew to Thailand for two months to provide medical assistance to Hmong and other Indochinese residents of refugee camps. Heyer was profoundly moved by the plight of the refugees.

"It was real sad," she says today. "I was kinda affected by the whole thing."

Once back home, the mother of seven did not falter in her determination to help. Her family parish, St. Benedict the Moor, at 924 W. State St., was acting as sponsor for several new Indochinese families here. With characteristic enthusiasm, Heyer made their needs hers.

She's started all sorts of programs for the newcomers and even has sponsored four families herself.

"It's a neat experience, especially picking them up at the airport," says Heyer.

As she casually mentions one thing after another that she's organized for Indochinese who have emigrated to Milwaukee, one might think Heyer had great quantities of spare time. Hardly. She works part time as a pediatric nurse in home care and has been pursuing a bachelor's degree for two years at Carroll College in Waukesha.

Family life is demanding, too. Two of the Heyer brood, ranging in age from 17 to 29, are teenagers.

"We could write a book about adolescent crisis," she says, laughing.

On a more serious note, she says that her 29-year-old Annie is physically and mentally retarded. Annie lives at home and requires constant care on weekends and after she returns from school on weekdays.

Nevertheless, Heyer seems everywhere at once for the Indochinese community. The basement of the Cape Cod home she and her husband, Russell, built has box upon box of rummage sale clothing for Indochinese families. "Somehow I got started in the clothing business," she says.

Heyer also teaches monthly health classes for Indochinese at two Guadalupe Center locations and will offer a 15-class course this fall at the Sixteenth Street Community Health Center, 1032 S. 16th St. She's also made presentations to emergency room staffs at most Mikwaukee-area hospitals, showing her refugee camp slides and speaking of the type of illnesses these immigrants may come down with.

Since 1981, except for last year, when surgery kept her from applying in time, Heyer has secured a small annual grant from the Sisters of St. Dominic in Racine. With it she's helped cover emergency expenses for Indochinese families for such things as heat and food.

How do the families know to contact her?

"If you need help, call this lady," she describes her image among the local Indochinese.

Their gratitude is evident, in a multitude of hand-stitched wall hangings about the house.

But Heyer's helping hand extends not just to her Indochinese friends. The first Sunday each month finds her mixing 30 pounds of meat loaf for St. Benedict's meal program for the poor. Other evenings find her greeting people as they enter the hall for the meal. She no longer sits at a back table, offering to check diners' blood pressure, as she used to. Now there's a formal health program affiliated with the meal program, she says with pride.

As it does to the Indochinese, her heart goes out to the poor. Her children work at the meal program, too.

"It gives us a view of the world we couldn't get in little Wind Lake," she says.

## A TRIBUTE TO FREEDOM IN AFRICA

Mr. HELMS. Mr. President, on the political battlefield in Washington—fought by a constant scramble for air time, column inches, and grassroots letter campaigns and activism—it is not rare to find a politician who takes an unpopular position, who is criticized and lambasted in the press, and whose views are distorted and misrepresented. But it is rare to find a political leader who is vindicated by events, to have that vindication publicly acknowledged in the news media, and to have his once unpopular position advocated by his previous opponents.

Mr. President, rare as those circumstances are, in this case they apply precisely to our distinguished colleague from Idaho, Senator SYMMS, and his stand against South African sanctions. His stand on South Africa was originally belittled, attacked, and maligned, but now, 13 months later he has been vindicated by some of the very individuals who originally criticized Senator SYMMS because he vigorously opposed South African sanctions.

Senator SYMMS warned that sanctions would slow the dismantling of apartheid, weaken United States leverage in South Africa, throw thousands of blacks into unemployment, and help the Marxist-Leninist ANC. And I might add parenthetically, Mr. President, that the ANC condones killing people by throwing flaming tires around their necks. This is the same organization with which the State Department has met 59 times—I repeat—59 times.

Indeed, Mr. President, the South African Catholic Bishops' Conference has reversed itself on the issue of sanctions, saying that sanctions "have clearly had a totally counterproductive effect." They have slowed the pace of reform and set back economic progress by black South Africans.

Let us take another example:

Mr. William Raspberry, a liberal black columnist for the Washington Post earlier this year wrote an article titled "Sanctions Backfired." Raspberry's opening line was: "Have economic sanctions against South Africa backfired? Probably yes." He went on to say "hurting white people is not the same as helping black people."

Moreover, Mr. President, the sagacity of the distinguished Senator from Idaho—albeit belatedly—has not gone unnoticed in his State. Recently the Idaho Press-Tribune ran an article by Lawrence Reed praising Senator SYMMS' foresight and straight talk.

Mr. President, there are other issues on South Africa in which my good friend and colleague from Idaho has distinguished himself. Most recently, as the Idaho Press-Tribune points out, Senator SYMMS has shown a consistent sensitivity to the aspiration of freedom by the Mozambican people.

Senator SYMMS has stood on the floor of the Senate and pointed out that there are over 20,000 foreign Communist troops in Mozambique propping up the Marxist-Leninist regime. That number does not include the 25,000 FRELIMO troops. That brings the total number of Communist troops in Mozambique to 45,000. The 25,000 pro Western freedom fighters of RENAMO have kept over 45,000 Communist troops at bay because of their massive popular support in the countryside and the Mozambican peoples' quest for freedom.

Mr. President, Senator SYMMS' has done much for the cause of freedom in southern Africa. And I believe Senator SYMMS' views on Mozambique, unlike those of the Department of State, will be vindicated 12 to 18 months from now just as they have been on South Africa.

Mr. President, I ask unanimous consent that the article by Mr. Raspberry and the article from the Idaho Press-Tribune be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 28, 1987]

SANCTIONS BACKFIRED

(By William Raspberry)

Have economic sanctions against South Africa backfired? Probably yes.

Is there anybody in America who supported sanctions who now thinks that maybe sanctions weren't such a wonderful idea after all? Probably not.

The congressional imposition of sanctions, underscored by a resounding override of a presidential veto, will still be remembered as such a magnificent victory for the forces of righteousness that it may be impossible for the pro-sanctions activists to entertain second thoughts.

And yet the clear evidence is that Pretoria's principal reaction to international sanctions has been what seasoned observers of South Africa had long predicted: a white

retreat into the *laager*—a circling of the wagons—and an end to any pretense of serious reform.

A report commissioned last May by the South African Catholic Bishops' Conference argues that the sanctions imposed to force reform of apartheid are having the opposite effect:

"The whole sanctions issue has consolidated the government in its retreat from meaningful and, indeed, any reform. . . . What was anticipated by the pro-sanctions lobby—an early change in government policy with expectations of imminent meaningful black participation in a regime overcome by the pressures of economic boycotts—is not likely to materialize.

How could so many intelligent, well-meaning people have thought otherwise? The answer, I think, is that South Africa's racism is so clear-cut an evil, so conducive to good-guy/bad-guy analyses that it's difficult for anti-apartheid partisans to think their way from policy proposal to probable outcome.

Disinvestment, divestiture and finally, sanctions became such rallying cries for campus activists, civil rights activists and other haters of apartheid that their demands became ends in themselves. In general, only political conservatives who saw apartheid as less threatening to their interests than the prospective loss of vital minerals, sea routes and an anti-communist bastion could bring themselves to question the advisability of sanctions.

For most of the rest, the operative question was: How can you oppose sanctions, which would surely hurt the supporters of apartheid, and still call yourself a supporter of justice for blacks?

The answer, which too few of us found the voice to utter, is that hurting white people is not the same thing as helping black people.

Many were misled by the fact that the threat of sanctions had, from time to time, led the South African government to undertake at least cosmetic reforms of apartheid and concluded that the actual imposition of sanctions would be even more effective.

In fact, South Africa's concessions were undertaken to keep as much as possible of the goodwill of the international community and to avoid wrecking its Western-style economy. Once the damage was inflicted, the threat-induced incentive to change evaporated.

It is a bit like blackmail. Threaten to publish my darkest secrets, and I might pay you hush money. Actually publish them, and you won't collect a dime.

It does not follow, by the way, that failure to impose sanctions would have produced true reform of the South African system. You can't blackmail me into suicide, which is precisely how many in the white South African minority view the one-man/one-vote demands that strike Americans as simple justice.

When it comes to the National Party, which, despite its deepening troubles, still is the dominant political force in the country, the only way to force it into giving up its overwhelming power is to persuade it that the alternative is worse. It's hard to think of anything the United States could do that would strike Afrikaners as worse than giving up control: not constructive engagement, the ineffectual Reagan policy; not economically destructive disengagement, which sanctions have become.

The only people who can be cheered by events in South Africa, including the devastation of the economy and the tightening of the screws of repression, are those who believe that bloody revolution is the only solution and that sanctions, by making conditions completely intolerable for blacks, will bring on the revolution.

Is that what we really want?

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[From the Idaho Press-Tribune, Aug. 20, 1987]

SYMMS BLOCKS STATE DEPARTMENT'S SOUTHERN AFRICA POLICY

(By Lawrence Reed)

One thing that accounts for Steve Symms' political appeal in Idaho in his plain talk. On most issues, you know where he stands whether or not you agree with him.

There are a lot of things a senator from Idaho is expected to know but policy toward southern Africa is not really one of them. Yet our junior senator is emerging as an outspoken activist and a leader on issues of vital concern to the United States in that part of the world.

Last year, Symms was roundly criticized in the press for expressing skepticism about sanctions against South Africa. He thought they might backfire and end up strengthening the racist apartheid system, hurting the very blacks they were supposed to help and increasing U.S. dependency on unreliable or hostile sources for important raw materials. As it now turns out, he was right on all counts.

Earlier this year, the South African Catholic Bishops' Conference reversed itself and declared that sanctions have "clearly had a totally counterproductive effect." The pace of reforms has slowed and divestment by U.S. firms has set back economic progress by black South Africans.

Even worse, U.S. dependence on the Soviet Union for strategic minerals we used to get at lower prices from South Africa has dramatically increased. A shocking Aug. 3 editorial in Barron's revealed that U.S. imports of several "critical materials" from the U.S.S.R. have risen by factors of 10 to 100 in the wake of sanctions against South Africa.

As Sen. Symms notes, a liberal has yet to appear, placard in hand, in front of the Soviet Embassy to call for divestment from the land of the Gulag. Perhaps the only economic issue on which most liberals take a laissez faire approach, Symms says, is aid and trade with the Kremlin.

But it is U.S. policy toward another country in southern Africa—Mozambique—which has thrust Symms to center stage of a fierce debate in the Senate. The State Department wants to send millions in U.S. aid dollars to that country's bloody Marxist dictatorship in an effort to buy the regime away from the Soviet Union.

Given the history and nature of Marxist dictatorships, such a plan would appear to be naive at best. What makes it especially bad is that the Mozambique government is besieged by a popular, anti-communist, pro-Western insurgency known as RENAMO. The rebels control more than two-thirds of the country in spite of the government's heavy support from East-bloc nations, and Symms wants to know why on Earth the U.S. State Department wants to send money to prop up a Soviet ally.

Symms and a cluster of other Republican senators, including majority leader Robert Dole, have stymied the State Department's effort to get confirmation of Melissa Wells as the new U.S. ambassador to Mozambique. Wells favors the aid and has shown a disturbing tendency to swallow nearly all the anti-RENAMO propaganda the desperate Mozambique regime can produce.

In a lengthy speech on the floor of the Senate last month, Symms condemned the State Department for trying to buy itself a Marxist government. "They think they can suck and blow in the same breath, but it can't be done," he said. Of the Wells nomination, Symms, declared it should be withdrawn and a new candidate sent up who, unlike Wells, has "at least the courage to demand the withdrawal of all foreign forces from Mozambique, such as those of the Soviet Union, East Germany and North Korea."

In America, Mozambique isn't much of an issue outside of Washington, D.C., but maybe it should be. In any event, thanks in great measure to Sen. Symms, the State Department is having a hard time foisting bad policy on that unfortunate country.

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## CHANGES IN REQUIREMENTS FOR NUCLEAR POWERPLANT EMERGENCY PLANS

Mr. BIDEN. Mr. President, yesterday, the Nuclear Regulatory Commission [NRC] issued its long-awaited decision on changes in the requirements for emergency plans for nuclear powerplants. As expected, the NRC rule seeks to weaken the requirement for State and local participation in the development of emergency plans for the 10-mile zone. This is a shift in policy that does not serve the public health and safety well.

The rule change allows a utility to design and submit its own evacuation plan if State and local governments decline to participate in development of such a plan. To qualify for this special treatment, the NRC would have to determine that the utility made a "good-faith effort to secure and retain the participation of the pertinent State and/or local governmental authorities * * *."

If the utility's arguments were accepted as valid, the Commission then would have to determine that the "applicant's emergency plan provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned." The utility plan will have to meet the same standards as one drafted with State and local participation, but will be allowed a certain amount of leeway based on the utility's efforts to overcome the impact of nonparticipation.

Also, in deciding whether a utility plan is adequate, the NRC is allowed to assume that "in an actual emergency, State and local government officials will exercise their best efforts to protect the health and safety of the public."

Mr. President, the NRC's new rule contains a number of generous standards and some rather dangerous assumptions, all of which leave the public worse off than under the previous rule.

First, the NRC allows a utility to draft its own plan if State or local gov-

ernments decline to participate. The rule does not require an assessment of the validity of the State or local objections, only that there is nonparticipation. This overlooks the possibility that State and local governments may have legitimate concerns about the ability to safely evacuate the 10-mile zone.

As an example, a major escape route from Shoreham would be the Long Island Expressway, a highway well-known for its severe traffic problems. Despite this obvious flaw that is a basis of New York and Long Island officials' objections, under the new rule Shoreham's owners would be able to move ahead to the next step of filing an emergency plan. The NRC rule wrongly assumes that State and local nonparticipation is always rooted in purely political considerations, not in legitimate concerns over public safety.

The rule injects a blanket rejection of any State or local objections into analysis of evacuation plans. The record shows that these objections are not without merit, as the NRC wants us to believe. Again, in the case of Shoreham, New York and Long Island officials have studied evacuation proposals extensively and have found none to be satisfactory. One official projected "immobilized public evacuation" in the event of an emergency at Shoreham. I also note that the Federal Emergency Management Agency has raised questions about the adequacy of the New Hampshire portion of Seabrook's evacuation plan. The NRC and the nuclear industry simply fail to accept that safe evacuation is not always possible.

After making this first assumption—that State and local objections are not real—the next one is easy. The NRC assumes that if a plan is put in place, State and local public safety departments will be satisfied with the utility-drafted plan, and will be successful in implementing the plan in an emergency. This belief represents an astounding leap of faith and ignores other NRC policies on this issue.

For the vast majority of nuclear plants with evacuation plans that enjoy the confidence of State and local officials, the NRC requires period practice of the plans. The agency recognizes that an unpracticed plan invites disaster. But for those plants where local officials believe safe evacuation will be impossible, the NRC is apparently willing to believe that no practice of the plan is needed. Nothing could be worse for public health and safety.

The Commission claims that its actions should not be viewed as prejudging the adequacy of any outstanding evacuation plans, but it is difficult to believe that the controversial Shoreham and Seabrook plans will fail to be approved under this "framework." This belief is bolstered by the observation that utilities will be able to apply for the special treatment because of "compelling reasons," reasons that may have noting to do with safety.

The Commission also claims that "the rule is not intended to diminish public protection * * *." However, even the NRC staff found this to be a likely outcome. The NRC staff found "the adoption of the proposed amendments may result in a less coordinated offsite emergency plan as compared to sites where full coordination has been achieved."

In short, the Commission is charging ahead in its efforts to bring Shoreham and Seabrook online, attempting to renege on its earlier promises to uphold requirements for State and local participation at this last stage. It is an attempt that still has many hurdles to clear, and one that I hope, for the good of public safety, will ultimately fail.

## MESSAGES FROM THE HOUSE

At 12:10 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, with amendments, in which it requests the concurrence of the Senate:

S. Con. Res. 38. A concurrent resolution to recognize the International Association of Fire Fighters and the National Fallen Fire Fighter Memorial in Colorado Springs, Co.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 515. An act to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card.

## MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 515. An act to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card; to the Committee on Banking, Housing, and Urban Affairs.

## MEASURES PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3457. An act to amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such Act.

## ENROLLED JOINT RESOLUTION SIGNED

The Acting President pro tempore (Mr. GRAHAM) reported that on today, October 30, 1987, he had signed the following enrolled joint resolution, which had previously been signed by the Speaker of the House:

H.J. Res. 309. Joint resolution providing support for the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

David G. Larimer, of New York, to be U.S. district judge for the western district of New York;

Ernest C. Torres, of Rhode Island, to be U.S. district judge for the district of Rhode Island;

William L. Standish, of Pennsylvania, to be U.S. district judge for the western district of Pennsylvania;

James A. Parker, of New Mexico, to be U.S. district judge for the district of New Mexico;

William L. Dwyer, of Washington, to be U.S. district judge for the western district of Washington;

Lawrence J. Siskind, of California, to be special counsel for Immigration-Related Unfair Employment Practices for a term of 4 years; and

Jeffrey M. Samuels, of Virginia, to be an Assistant Commissioner of Patents and Trademarks.

By Mr. PELL, from the Committee on Foreign Relations: Treaty Doc. 100-1. The International Wheat Agreement, 1986, which was open for signature at the United Nations Headquarters, New York, from May 1, 1986, through June 30, 1986, and signed on behalf of the United States on June 26, 1986; consisting of (1) the Wheat Trade Convention, 1986; and (2) the Food Aid Convention, 1986 (Exec. Rept. No. 100-10).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DURENBERGER:

S. 1833. A bill to make grants from amounts appropriated from the Federal Hospital Insurance Trust Fund under title XVIII of the Social Security Act to test the cost-effectiveness of innovative nursing practice models under the medicare program; to the Committee on Finance.

By Mr. CHILES (for himself, Mr. SHELBY and Mr. WEICKER):

S. 1834. A bill to assure the right of passengers in air commerce to have access to certain courtesy vehicles operated at airports; to the Committee on Commerce, Science, and Transportation.

By Mr. EVANS (for himself, Mr. BOREN, Mr. DOLE, Mr. PROXMIRE, Mr. DOMENICI, Mr. EXON, Mr. HUMPHREY, Mr. BENTSEN, Mr. GRAMM, Mr. PRYOR, Mrs. KASSEBAUM, Mr. NICK-

LES, Mr. ROTH, Mr. BOND, Mr. PRESSLER, Mr. GARN, Mr. TRIBLE, Mr. MCCAIN, Mr. KASTEN, Mr. KARNES, Mr. HECHT, Mr. HELMS, Mr. THURMOND, Mr. MURKOWSKI, Mr. SYMMS, Mr. ARMSTRONG, Mr. DANFORTH, Mr. QUAYLE, Mr. LUGAR, Mr. WILSON, Mr. WALLOP, Mr. GRASSLEY, Mr. COHEN, Mr. WARNER, Mr. MCCLURE, Mr. SPECTER, Mr. CHAFEE, Mr. HATCH, Mr. MCCONNELL, Mr. BOSCHWITZ, and Mr. RUDMAN):

S. 1835. A bill to provide that each title of any bill or joint resolution making continuing appropriations that is reported by a committee of conference and is agreed to by both Houses of the Congress in the same form during a 2-year period shall be presented as a separate joint resolution to the President; to the Committee on Rules and Administration.

By Mr. PRYOR (for himself, Mr. SPECTER, Mr. BUMPERS, Mr. THURMOND, Mr. WILSON, Mr. BREAUX, Mr. HEFLIN, Mr. HELMS, Mr. D'AMATO, Mr. BURDICK, Mr. HEINZ, Ms. MIKULSKI, Mr. DOLE, Mr. CHILES, Mr. NUNN, Mrs. KASSEBAUM, Mr. SANFORD, Mr. FOWLER, Mr. CONRAD, and Mr. LEAHY):

S. 1836. A bill to amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such act; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. WILSON:

S.J. Res. 210. A joint resolution to designate the period commencing February 8, 1988, and ending February 14, 1988, as "National Burn Awareness Week"; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for Mr. GORE):

S. Res. 310. A resolution to express the opposition of the Senate to the ruling of the Nuclear Regulatory Commission eliminating the requirement of State and local participation in emergency evacuation plans for nuclear production or utilization facilities; to the Committee on Environment and Public Works.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTION

By Mr. DURENBERGER:

S. 1833. A bill to make grants from amounts appropriated from the Federal Hospital Insurance Trust Fund under title XVIII of the Social Security Act to test the cost-effectiveness of innovative nursing practice models under the Medicare program; referred to the Committee on Finance.

MEDICARE NURSING PRACTICE AND PATIENT CARE IMPROVEMENT ACT

● Mr. DURENBERGER. Mr. President, I rise today to introduce the Medicare Nursing Practice and Patient Care Improvement Act of 1987. This bill makes grants from the hospital insurance trust fund under title XVIII of the Social Security Act to test the cost-effectiveness of innovative nursing practice models under the Medicare Program.

The number of nurses educated in schools of nursing has grown dramatically in the past 30 years, but our unmet need for nurses is still increasing rather than decreasing. This problem is not due to any past failure to train or recruit nurses. Rather, the current shortage reflects a greatly increased demand for nurses not a declining supply.

There are several reasons for this higher demand. Because of changes in medical practice, hospitalized patients are sicker and require higher levels of professional care than they have in the past. Wages and other incentives for nurses have not risen with the speed or magnitude seen in other labor markets. Finally, the specialized abilities of registered nurses are not fully utilized.

Under current management practices, these professionals with increasingly sophisticated education and technical training are often required to perform many nonclinical tasks, which inhibit their ability to provide high-quality, cost-effective patient care. In the process, resources are wasted and nurses have low levels of job satisfaction. These problems are well-documented in an excellent article by Linda Aiken and Connie Mullinix published recently in the New England Journal of Medicine. Mr. President, I ask unanimous consent that this article be published in the RECORD at the end of the statement.

To solve the discussed problems, I believe that a radically new approach is needed, one that recognizes the vastly increased options that women today have to choose other careers. Nursing must come into the 1990's and beyond if it is to continue to attract the top flight women—and men—who now have many other choices. Health care managers and nursing, which has long been one of the great opportunities for dedicated and talented women, also need to prepare for the future. The future will be better only if the levels of professionalism and autonomy are high and the practice environment is challenging and rewarding. The world for women has changed and I am proud to have helped accelerate that change by pushing hard for economic and other equity for women in legislation since I first came to the Senate, most recently with S. 1309, the Economic Equity Act of 1987.

By funding projects to demonstrate and evaluate innovative nursing practice models, this bill will encourage hospitals and nursing homes to utilize registered nurses as patient care managers, increase nurses' roles in facility administration, develop career progression opportunities for nurses, and improve working conditions to retain and attract the highest quality staff.

My own State of Minnesota has had excellent experience in using professional nurses as case managers. Currently, all 87 counties in Minnesota are using RN's as case managers for Medicare beneficiaries. These nurses are helping seniors and their families to make informed decisions about their care, helping people stay out of nursing homes, promoting independence, and helping to ensure high-quality, cost-effective health care for senior citizens. By translating this experience into the hospital and long-term care setting, we will improve job satisfaction and foster recruitment and retention.

We in the Congress know from the past that quick fixes to nursing shortages have only served to create long-term problems. Our challenge, then, is to find solutions not only for the present, but also for future generations. I urge my colleagues to join me in working toward enactment of this much needed legislation. I ask that the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1833

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Nursing Practice and Patient Care Improvement Act of 1987".

SEC. 2. NURSING PRACTICE DEMONSTRATION GRANTS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into contracts with hospitals and nursing homes which provide services to individuals eligible to receive benefits under title XVIII of the Social Security Act to provide grants for the purpose of demonstrating and evaluating (in both fee-for-service and group practice prepayment settings) the cost-effectiveness of innovative nursing practice models designed to integrate case management and patient care, increase the role of nurses in facility administration, improve working conditions, and improve patient care under the medicare program.

(b) DESCRIPTION OF MODELS.—Models demonstrated and evaluated under a grant under subsection (a) shall include initiatives to—

(1) utilize registered professional nurses as patient care managers to integrate case management and patient care by managing and coordinating all aspects of patient care for each of their primary patients from preadmission planning through post-discharge follow-up;

(2) assess and document patient outcomes of nursing care and patient care management (including nursing diagnosis and treatment);

(3) support or develop practice models which incorporate participative management structures;

(4) Support or develop collaborative practice relationships between nurses and physicians;

(5) develop or expand career progression strategies for registered nurses;

(6) test innovative payment structures for nurses which are based on career progression and are designed to recognize the nature of the professional nursing position and reward higher levels of education and experience; and

(7) improve working conditions for nurses through innovative approaches to work hours and schedules and through providing such benefits as on-site child care, peer support groups, and on-site continuing education programs.

(c) DURATION OF PROGRAM.—Grants under subsection (a) shall be made with respect to the three-year period beginning on October 1, 1988, and ending on September 30, 1991.

(d) AUTHORIZATION OF APPROPRIATIONS.—For purposes of making grants under subsection (a), there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $10,000,000 for each of the fiscal years 1989, 1990, and 1991.

(e) INFORMATION REQUIREMENTS; REPORTS.—

(1) The Secretary shall require a hospital or nursing home with a contract under subsection (a) to provide to the Secretary such information as the Secretary may require to evaluate the models conducted under the contract.

(2)(A) Not later than January 1 of 1990 and 1991, the Secretary shall submit to the Congress an interim report on the progress of the models conducted under subsection (a).

(B) Not later than January 1, 1992, the Secretary shall submit to the Congress a final report on the models conducted under subsection (a) that—

(i) compares the cost-effectiveness of each of the models conducted pursuant to contracts under subsection (a);

(ii) describes the effect of each such model on the use and cost of physician and hospital services, quality of care, and the discharge planning process; and

(iii) contains recommendations with respect to—

(I) the use of nurses as patient care managers in settings other than hospitals and nursing homes,

(II) the education and experience that should be required of nurse patient care managers, and

(III) measures related to the purposes of the models conducted under subsection (a) that would further improve patient care under the medicare program.

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## SPECIAL REPORT: THE NURSE SHORTAGE, MYTH OR REALITY?

(By Linda H. Aiken, R.N., Ph.D. and Connie Flynt Mullinix, R.N., M.P.H., M.B.A.)

The proportion of vacant positions for registered nurses in hospitals doubled between September 1985 and December 1986, reaching the levels of the last national nursing shortage of 1979. Current reports of vacancies are perplexing in the light of the size of the nation's supply of nurses. The output of nurses has doubled over the past 30 years, greatly exceeding the population growth, and licensed registered nurses now number 2.1 million. Between 1977 and 1984 alone, the number of employed nurses increased by 55 percent, as compared with an 8 percent growth in population. Intuitively, it would seem that an increased number of nurses would be the solution, but the problem persists nevertheless.

The reported shortage of hospital nurses exists in the midst of a substantial reduction in hospital inpatient capacity nationally. The demand for acute inpatient care in general hospitals has fallen, resulting in 50 million fewer inpatient days in 1986 than in 1981. Since 1983, hospitals have closed more than 40,000 beds, and average hospital occupancy rates dropped to 63.4 percent in 1986. Enrollments in nursing schools have also decreased markedly, raising the possibility that fewer nurses than anticipated will be available in the future.

There is now a contentious debate about whether a shortage of hospital nurses truly exists and about its causes. In 1981, the Institute of Medicine was commissioned by Congress to reconcile the evidence of an increased supply of nurses with continued reported shortages. The study concluded that the national supply of generalist nurses was adequate for the present and short-term future. Cyclical vacancies in positions for hospital nurses were attributed primarily to local labor-market conditions, although a shortage of nurses in certain specialties was noted. Recommendations were made to the hospital industry on the need to restructure nursing roles and develop improved financial rewards and opportunities for career advancement in clinical care. The National Commission on Nursing made remarkably similar recommendations in 1983. But in 1986, the American Hospital Association was again reporting that high vacancy rates in positions for nurses were disrupting hospital care, whereas the U.S. Department of Health and Human Services again concluded that the national supply of nurses was in balance with the demand.

### EMPLOYMENT PATTERNS OF NURSES

The shortage of nurses is measured by the hospital industry as vacant budgeted full-time-equivalent positions for registered nurses. Vacancy rates, however, are not an objective measure of the need for bedside nurses. Moreover, the number of budgeted positions for nurses reflects a number of factors, including budget constraints as well as local wage rates. Despite these limitations, we have chosen to analyze vacancy rates because they are used by the industry to reflect the changing supply of nurses.

There are several commonly held but erroneous beliefs about nurses' work patterns. One misconception is that nurses have left nursing in large numbers and are either inactive or working at jobs outside health care. In contrast, nurses have one of the highest rates of participation in the labor force among workers in predominantly female occupations. Almost 80 percent of registered nurses are actively employed either full-time or part-time, as compared with 54 percent of all American women. Not much is known about those who do not renew their licenses and, therefore, are not counted in the population of registered nurses. But less than 6 percent of registered nurses are employed in other occupations and are not seeking a position in nursing. Given the responsibilities of women for child rearing and other domestic concerns, an employment rate of 80 percent may be almost as high as can be expected. Thus, it is unlikely that unemployed nurses represent a large potential resource for hospital employment. However, nursing is somewhat unusual in that 27 percent of the total pool of registered nurses work part-time. Clearly, a change in the number of hours worked by more than 500,000 part-time registered nurses could substantially affect the supply of full-time-equivalent nurses.

Some observers have suggested that the shortage of nurses in hospitals may be due to the increased demand for nurses in ambulatory settings and new administrative positions in health care. However, hospitals' share of the ever-growing pool of nurses has not changed substantially since 1960. Sixty-eight percent of all employed nurses work in hospitals. Hospitals have dramatically increased the number of nurses they employ in the aggregate and in relation to numbers of patients, even when the recent increase in outpatient visits is taken into account. In fact, hospitals are employing more registered nurses than ever before and are even replacing non-nurses with nurses—just the opposite of what would be expected during an actual shortage of nurses.

In response to reduced numbers of inpatients, hospitals employed 133,376 fewer full-time-equivalent workers in 1986 than in 1983. In contrast, the number of full-time equivalent nurses increased by 37,500 during the same period. A substantial increase in the ratio of nurses to patients resulted. In 1972, hospitals employed 50 nurses per 100 patients (average adjusted daily census); by 1986, the figure had increased to 91 nurses per 100—an 82 percent expansion (Fig. 1). Aides and licensed practical nurses were replaced by registered nurses. In 1968, registered nurses accounted for only 33 percent of hospitals' total nursing-service personnel; by 1986, registered nurses accounted for 58 percent.

### THE CHANGING DEMAND FOR NURSES

The rapidity with which the current shortage developed suggests that increased vacancy rates must be due to a changing demand for nurses, not to a declining supply. There are three primary explanations for the recent increase in the demand for hospital nurses. First, hospitalized patients are sicker and require more care than in years past, on average, because of the reduction in discretionary admissions and the shorter average length of stay. However, there is no basis to suggest that the average condition of hospitalized patients changed dramatically enough between 1982 and 1986 to require a 26 percent increase in the ratio of registered nurses to patients. Although the changing case mix may provide a partial explanation for the increased demand for nurses, it cannot be the only explanation.

A second explanation for the recent increase in vacancy rates is related to changing budget constraints in hospitals. When vacancy rates were at an all-time low of 3.7 percent in 1984, the Medicare Prospective Payment System was just being implemented and fears of severe hospital-budget limits were widespread. As a result, some budgeted positions were eliminated. Unexpectedly high operating margins, however, provided the opportunity for hospitals to budget for more nursing positions.

A third explanation is related to changes in nurses' relative wages. In most labor shortages, wages are adjusted and other incentives are developed to attract additional workers. These market adjustments fail to occur in nursing with the rapidity or magnitude seen in other labor markets. Labor economists have described nursing as a "captured" labor market. In any given community, a small number of hospitals employ most of the local nurses—a phenomenon known as oligopsony in labor economics. Employers offering nurses jobs with weekday hours usually have no trouble employing nurses and thus do not compete with other employers on the basis of salary. There is no demand for nurses outside the health care field that is sufficient to create competitive pressures on the hospital industry, as there is, for example, for computer

programmers. Moreover, hospital administrators tend to assume that there is a finite number of nurses in any given community, and that wage competition among hospitals will be costly and will not resolve community shortages. The majority of nurses, if they want to work, must accept the terms offered by hospitals.

Registered nurses are versatile employees in a hospital context. They can provide all the services for which hospitals sometimes employ nurses' aides and licensed practical nurses, and they can also often perform a wide range of other functions, including those assigned at other times to secretarial and clerical personnel, laboratory technicians, pharmacists, physical therapists, and social workers. Nurses substitute for physicians under some circumstances, and commonly assume hospital management roles after regular work hours. Thus, when nurses' relative wages are low as compared with other workers, it is advantageous for hospitals to employ them in greater numbers and in lieu of other kinds of workers. Even if nurses' wages are 20 to 30 percent higher than those of licensed practical nurses or secretaries, it may still be more economical to hire nurses, because they require little supervision and can assume responsibility for a wide range of duties. The increased demand for nurses created by low relative wages can lead to shortages in some geographic locations, in specialty units, and on undesirable evening, night, and weekend hours.

The relative-wage theory is supported by data spanning several decades. From 1946 to 1966, for example, the increases in nurses' wages lagged behind those in comparable women's occupations. Nurses' wages over the period increased by 53 percent, whereas teachers' salaries increased by 100 percent and female professional and technical workers' salaries increased by 73 percent. In the early 1960s, more than one in five budgeted positions for nurses were vacant. There was great concern at the time that the increased demand for hospital care accompanying the introduction of Medicare and Medicaid would exacerbate the shortage of nurses. But these new programs were accompanied by substantial wage increases for nurses. Employment rates among nurses increased substantially after these wage increases, as did enrollments in nursing schools. The proportion of vacant budgeted positions for nurses in hospitals dropped from 23 percent in 1961 to 9 percent by 1971. But, after hospital wage and price controls, in 1971 and state rate setting and the voluntary hospital cost-containment effort a few years later, nurses' wages declined relative to other groups' and the proportion of vacant positions for nurses in hospitals increased again, leading to the shortage of 1979. There was a wage response to the 1979 shortage; nurses' wages rose an average of 13 percent annually in both 1980 and 1981. By 1984, the proportion of vacancies had reached a low of 3.7 percent.

The substantial wage increases received by nurses in 1980 and 1981 did not continue subsequently, and by the time the new Medicare prospective payment system was implemented, nurses' wages had been eroded. Hospital nurses have received only modest wage increases since 1982. By 1985, average salaries for teachers were 19 percent higher than those for nurses, and average salaries for all female professional and technical workers were 10 percent higher. Despite all the publicity about the shortage of hospital nurses, nurses' wages increased only 4 percent in 1986.

DECLINING NURSING SCHOOL ENROLLMENTS

Since 1983, enrollments in nursing schools have dropped by 20 percent (National League for Nursing: unpublished data). The number of new nurses graduating annually is predicted to fall from a high of 82,700 in 1985 to 68,700 or lower by 1995. All types of nursing programs have had declining enrollments; associate-degree programs have had a decline of 19 percent, baccalaureate programs 12 percent (National League for Nursing: unpublished data). Enrollments in three-year hospital diploma programs have been declining for more than two decades and now account for only 14 percent of graduates annually.

The country's demographic profile is partly responsible for declining enrollments because of the smaller size of 18-year-old cohorts in recent years. However, interest in nursing as a career has fallen precipitously among college freshmen in both community colleges and four-year institutions. The University of California, Los Angeles, national survey of first-time college freshmen indicated a 50 percent decline since 1974 in the proportion of full-time women students planning to pursue nursing careers, in contrast to an almost threefold increase in the proportion interested in careers in business. Moreover, the College Board recently released data indicating that the SAT scores of high-school students interested in nursing careers were well below the national average for college-bound students, and that the SAT gap between prospective nurses and non-nurses was widening over time.

There are many reasons for the declining interest in nursing. Whereas starting salaries of nurses are now comparable to those of other college graduates, the average maximum salary for nurses is only $7,000 higher than the average starting salary. Since more women are choosing to work continuously in the labor force, the low raises discourage them from choosing a career in nursing. Moreover, employers do not offer substantial differences in salary in return for advanced education in nursing. Thus, the economic return on a baccalaureate degree in nursing is poor as compared with the return in alternative fields. Women today have many more career options than they had in years past. Most other careers offer comparable or higher economic rewards and do not require night and weekend work—a notable disadvantage of nursing.

RECOMMENDATIONS FOR CHANGE

A number of issues deserve careful reconsideration and experimentation. First, public-policy makers must recognize that hospital rate setting can induce labor shortages by artificially depressing wages in occupations like nursing, in which hospitals are the dominant employers. In the short term, depressed wages will increase the demand for nurses, because they can substitute for other personnel, and result in acute spot shortages and high vacancy rates. Over the long term, recruitment to nursing will be seriously eroded by the absence of an adequate salary range that rewards skill and experience.

Second, one of the most unattractive aspects of nursing is the requirement of night and weekend work. With sicker patients, hospitals now need many more nurses on these unpopular shifts than they needed in the past, when it was not unusual to have a single nurse covering a unit at night. Most women want to work regular daytime hours and will even choose less interesting, less skilled, and worse-paying jobs to accomplish this. Preference for day work explains why vacancy rates are low in ambulatory care despite lower average salaries. Other industries that operate on a 24-hour basis offer substantial differences in wages for evening, night, and weekend work in order to attract sufficient voluntary staff coverage. Hospitals offer only small differences and try to make shift rotation a requirement of employment. Curiously, most of the innovations hospitals have adopted to reduce vacancies during unpopular shifts actually encourage nurses to work fewer hours. For example, some hospitals pay nurses a full-time salary to work two 12-hour weekend shifts (24 hours per week) but will pay full-time nurse equivalent hourly rates for unpopular shifts. In view of all the expenses associated with continued high vacancy rates, increasing marginal wage rates to fill vacancies on unpopular assignments might not be as costly as is commonly assumed.

Third, the work requirements of nurses and other personnel in hospitals should be restructured. The ratio of support personnel to professionals is substantially lower in the hospital industry than in other industries. Given the complexities of operating busy hospital inpatient units, there is an astounding absence of secretaries, administrative assistants, and mid-level non-nurse managers. Moreover, the computerization of hospitals has lagged far behind that of other industries. Nurses are currently performing many nonclinical, administrative, and management functions in hospitals. Fewer better-paid and better-educated nurses in combination with an improved nonclinical support staff might yield better care without substantial increases in operating costs.

Fourth, hospital management should introduce incentives to encourage experienced nurses to remain in clinical care. A differentiated wage structure that recognizes experience and advanced education is critical. Employment benefits such as pensions, tuition support, and sabbaticals could be used much more effectively to develop "loyalty" and thus reduce costly staff turnover.

Fifth, physicians should take leadership roles in the development of more effective collaborative models of practice with nurses in hospital practice is related to the absence of satisfying professional relationships with physicians. Many nurses choose administration over clinical practice in an effort to obtain greater status in their interactions with physicians. More effective nurse-physician collaboration in clinical care activities would improve the professional satisfaction of both groups and contribute to improved patient outcomes as well.

CONCLUSIONS

The evidence suggests that under current market conditions in many local communities, the demand for nurses is greater than the supply. Reardless of the reasons for his imbalance, there is only a limited number of possible solutions. Expansion of nursing-school enrollments to increase the national supply of nurses might eventually solve the vacancy problem but is unlikely to occur, given demographic trends and the declining interest of young people in nursing careers. Recruiting inactive nurses into the work force is also not a promising solution because employment rates are already high among nurses and may have reached a ceiling. Expanding the number of nurses trained abroad is an expedient option but one that might create more problems, in terms of quality of care, than it would solve. The development of incentives to induce part-time nurses to work more hours is a

promising option that should be pursued. Finally, if all the above methods to increase the supply of nurses still do not eliminate disruptive vacancies, restructuring hospitals to make more appropriate use of the special expertise of nurses is a difficult but obvious alternative.

None of these recommendations are new; they have been advocated consistently by every panel studying nursing shortages. Implementation, in contrast, has been slow, despite encouraging evidence from the few hospitals that are making the suggested changes. The fact is that nursing shortages are a consequence of complacent management and the reluctance of administrators to reexamine traditional practices. In the light of the attitudes of young women and their changing aspirations, what is now an artificially created shortage may become a critical problem in the future. Nurses are an essential resource for hospitals and the nation's health. Addressing their needs and aspirations realistically and examining their work conditions meaningfully are prerequisites for high-quality patient care now and in the future.●

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By Mr. CHILES (for himself, Mr. SHELBY, and Mr. WEICKER):

S. 1834. A bill to assure the right of passengers in air commerce to have access to certain courtesy vehicles operated at airports; referred to the Committee on Commerce, Science, and Transportation.

AIRPORT ACCESS FEES LEGISLATION

● Mr. CHILES. Mr. President, we have seen a tremendous increase in air travel in recent years. Part of this phenomenon has been an increase in the number of companies providing services to the flying public. As anyone who flies can relate, the number of car rental companies in many markets exceeds by far the number which can be accommodated within airport terminals or be located on property leased from airports. For the most part, these off-airport companies lease or purchase commercial property elsewhere and rely on shuttle vehicles to provide service to their fly-in customers.

This proliferation in car rental companies has been advantageous to the flying public. I am a firm believer in the benefits of honest, fair competition, and increased competition has no doubt helped hold down or even reduce the expense of car rentals. In States such as Florida, where tourism is a major industry, the wider economic benefits of lower travel costs are especially clear, and very important.

This increase in air travel has also burdened airports. As we all know, our aviation system capacity has not expanded to meet the new demand. While recent debate has focused on the need to provide additional runways and airports, groundside capacity also must be expanded. Greater eligibility for such projects, including roads, was an important part of aviation legislation which I introduced earlier this year. While it is not clear that courtesy vehicles have made the groundside traffic problem worse than it would otherwise be—it seems logical that courtesy vehicles reduce the number of private cars which airports must handle—groundside services clearly constitute an important and costly demand placed on public airports.

I have noted with concern the growing conflict between public airport operators and off-airport businesses which depend on courtesy vehicles to provide service to their customers. Airport owners and operators have rightly pointed out the tremendous cost of building and maintaining these public facilities and have sought to extend charges to off-airport companies which benefit from access to air passengers. That makes sense. But off-airport companies have also been rightly concerned that such charges not be used to discriminate against them, to the advantage of similar businesses operating on airports.

Off-airport companies at a number of airports have been charged access fees, typically gross-receipts fees of up to 10 percent, which seem substantially identical to the voluntary arrangements between airports and on-airport concessionaires. But the on-airport concessionaires have willingly bid to locate themselves inside airport facilities or on airport property. In cases where on-airport companies have paid either no rent or a minimal sum for counter and office space, advertising, or parking lots, the gross-receipts fee is the real payment for those facilities. Those facilities are not provided to off-airport companies. And on-airport space is limited, with most airports only able to offer a few long-term lease arrangements. To bid, an off-airport business would have to pledge a guaranteed minimum amount of money or a percentage of revenues, whichever is greater. That system precludes small businesses from competing for scarce on-airport facilities.

It is clear that off-airport businesses operating courtesy vehicles over airport roadways derive substantial revenues from the airline passengers who use the airport facilities. Airport owners and operators should be able to charge reasonable fees not only to airport tenants but also to the off-airport businesses that make use of certain airport facilities. But they should not charge them the same as the fee charged similar on-airport companies. Off-airport companies enjoy none of the substantial financial benefits of marketing their services in the airport terminal. For the most part, only on-airport concessionaires have counter space, courtesy phones, or advertising within airport terminals. Those companies generate substantial revenues from walk-up customers and from being able to charge premium rates for premium service. It should also be remembered that off-airport businesses frequently incur costs above and beyond those incurred by their on-airport competitors, for the purchase or lease of property and facilities outside the airport. A fair fee structure would reflect the difference in costs incurred and services provided by the airport to support various business activities, including those whose principal location is either on or off airport property.

To my mind, fairness dictates a solution which is simple to state. Off-airport companies should pay their fair share. But they should not be discriminated against. They should not be forced to pay as much as similar on-airport companies when they don't receive the same benefits. The fee structure at public airports should reflect a fair allocation of costs incurred and benefits provided all users.

Mr. President, that sounds simple. And it had been my hope that discussions between representatives of airports, on-airport concessionaires and off-airport companies would result in agreement on these issues. Unfortunately, a number of meetings, including those coordinated earlier this year by Congressman MINETA and several more recently by Senator FORD, did not lead to agreement. A subsequent hearing held by the Senate Commerce Subcommittee on Aviation highlighted the continued disagreement.

I have therefore taken a hard look at this issue and am today introducing legislation which I feel is fair and equitable. On the one hand, this legislation would ensure the continued competition which has resulted in lower prices and a diversity of services to the interstate air traveler. On the other hand it would clearly establish standards of fairness by which airport owners and operators may charge fees to off-airport companies which make substantial use of airport facilities and which obtain substantial, direct economic benefit from access to such facilities. The establishment of these standards is in the best interests of all parties.

TECHNICAL EXPLANATION OF THE BILL

This legislation would add a new section 1119 at the end of title XI of the Federal Aviation Act. Title XI contains a number of statements of congressional policy concerning aviation, including section 1115, which Congress added in 1973 to restrain airports from imposing local "head" taxes on airline passengers. Subsection (a) of the new section 1119 would guarantee access of airline passengers to courtesy vehicles operated by identifiable off-airport businesses, including rental car companies, parking lots, hotels, motels, resorts, amusement parks or tour businesses. The reciprocal right of such off-airport businesses to operate on airport roadways is also recognized.

This subsection specifically preserves the right of airport operators to designate public passenger pickup and

discharge areas and to control traffic, as long as the airport treats classes of users on a fair and reasonable basis. This bill does not alter the basic authority of the airport to regulate groundside congestion by treating common carriers, such as taxis, differently from courtesy vans operated by other off-airport businesses. Moreover, an airport would be able to discriminate reasonably in the designation of different pickup and discharge areas for off-airport and on-airport companies in the same line of business or for different types of off-airport users, subject only to the requirement that the decision be fair and reasonable. Obviously, at some point, designation could amount to an unreasonable or unfair denial of access to the unfavored entity as, for example, forcing passengers to walk hundreds of yards or cross heavily traveled roadways when other more convenient pickup/discharge areas were available. This bill allows airports the flexibility to regulate traffic and to fairly differentiate in the treatment accorded users of the airport facilities.

Subsection (b) of the new section 1119 would confirm that the airport owner or operator may charge reasonable fees to off-airport businesses. No one disputes that off-airport operators should pay their fair share to support the airports at which they operate. This subsection would make clear that fees be reasonable and not unjustly discriminatory, taking into account the type of use made of airport facilities, the volume and extent of use, and the difference between the costs incurred and services provided to off-airport businesses compared with those applicable to businesses that make use not only of airport roadways but also conduct their business in airport terminals and/or on property that is leased directly from the airport. This legal standard is derived from a substantial body of caselaw and economic theory concerning public utility regulation and the competitive conduct required of essential facilities under the antitrust laws. (Judicial notice has been taken of the fact that airports are "locational monopolies.") Both utility and antitrust laws recognize the potential adverse competitive effects when the owner of a facility that is necessary to produce a service imposes rates that do not appropriately reflect the cost-based differentials in service provided to its customers who compete in downstream markets. The statutory requirement that users of airport roadways be treated in a just and reasonable manner is necessary to protect against the airport's exercise of monopoly pricing power. Federal law currently requires, for example, that airports adopt a fair and reasonable fee structure for airlines and that tolls for federally funded bridges and tunnels be reasonable and just. This principle can easily be extended to off-airport businesses.

Airports have no reason to fear a legal standard that proscribes abuses of monopoly pricing power. Airports will retain flexibility to establish fee structures suited to their peculiar needs. Economic theory and legal precedent require merely that direct costs and indirect expenses fairly allocable to particular users be recovered from that class. For example, all users of the roadways could be required to contribute to their construction and upkeep. Airport concessionaires would be required to bear the direct and allocated costs for office, counter space, and other airport-provided services which they utilize. This legislation would not interfere with the airports' ability to solicit bids on a gross receipts basis, as such pricing mechanisms presumably take into account the marketing value of locating on-airport. This bill will not deny airports any source of revenue currently being derived from their on-airport concessionaires.

The bill also allows the airport operator to recover not only the direct costs of building or maintaining roadways but also permits a reasonable allocation of the costs of airport administration and other indirect costs to off-airport businesses, taking into account the difference between the type and extent of their use of airport facilities compared to the more intensive use of airport facilities by on-airport businesses. Thus off-airport businesses can be called upon to contribute their fair share toward supporting airport operations.

Airports should have no problems complying with a rule of fair treatment. They have been able to fund airport activity through reasonable assessments that are not unfairly targeted against businesses that compete with the favored class of on-airport franchisees. Airports are quite capable of developing cost-based fee structures, as they are obligated to do for airlines under section 511(a)(1) of the Federal Aviation Act of 1958, as amended.

A number of airports assess a per vehicle charge for courtesy vans either on a per trip or annualized basis. These fee structures sometimes also distinguish on the basis of weight or van capacity and projected frequency of use on airport roadways. Fee structures such as these that recapture costs spent in providing a direct service to a particular class of users would clearly not be objectionable under a legal standard that requires fees to be "reasonable and not unjustly discriminatory." Of course, many airports assess no fee and they would not be required to establish a fee structure which they may not view as necessary.

The legislation is drafted to prohibit only unfair and unreasonable fee structures. Some airports wish to protect the revenues generated by on-airport concessionaires. At first thought this is not without logic; some of the money earned by off-airport rental car companies, parking lots, and hotels from airline passengers would probably have gone to the airport concessinaires if the consumer were deprived of lower-priced options. However, since competition generated by off-airport operators has helped to expand the numbers of people who can afford to travel, it is equally plausible that on-airport concessionaires, and the airports, have also earned substantially more revenue.

As passengers using rental car companies and hotels are almost invariably from out-of-town, an airport operator has a natural incentive to increase its concessionaires' revenues by inhibiting competition that largely benefits travelers to whom the airport authority is not politically accountable. Nevertheless, while the desire to tax nonlocal airport users disproportionately to maximize airport revenues is understandable, it is contrary to the public interest. Adoption of Federal standards of conduct to guide local airport authorities in such circumstances is entirely appropriate.

Section 1119(c) provides for a private right of action for noncomplying airports. This makes clear that Congress intends to confer an enforceable right of access on reasonable terms to off-airport businesses, without making the Federal Government assume the costs and burdens of an enforcement role.

In summary, the legislation attempts to strike the appropriate balance between the airports' needs to generate revenues, on the one hand, and preservation of the consumer benefits derived from a competitive travel and tourism industry, on the other. A minimal degree of Federal oversight is required to preserve the healthy competition between on- and off-airport businesses. At the same time, Congress should not be in the business of dictating the precise formula for airport user fees. This remedial legislation authorizes airports to charge off-airport businesses just and reasonable fees, subject to judicial review in those rare instances when the airport authority abuses its powers.

Mr. President, I ask that a copy of the bill be entered into the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1834

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Congress finds that—

(1) passengers in air commerce have benefited greatly from competition in the car rental business through lower prices and a diversity of offerings to the consumer;

(2) many car rental companies depend on courtesy vehicles to provide service to their airport customers;

(3) passengers in air commerce should have a right of access to courtesy vehicles operated in airports by car rental companies and other businesses, including any parking lot, hotel, motel, resort, amusement park, theme park, or tour business which does not otherwise operate either from within an airport terminal or from land leased from the airport;

(4) many businesses operating courtesy vehicles on airport roadways derive substantial revenues from airline passengers using airport facilities; and

(5) airport owners and operators should have the right to charge reasonable and nondiscriminatory fees to companies operating on the airport and to off-airport companies which make substantial use of airport facilities and which obtain substantial direct economic benefit from access to such facilities.

SEC. 2. Title XI of the Federal Aviation Act of 1958 (49 U.S.C. 1501 et seq.) is amended by adding at the end thereof a new section as follows:

"SEC. 1119. (a) Air passengers who are customers of reasonably classified off-airport operators, including any rental car, parking lot, hotel, motel, resort, amusement park, theme park, or tour business, shall have the right of access to courtesy vehicles provided by those operators, and such off-airport operators shall have the right of access over the airport roadways to public passenger pickup and discharge areas designated on a fair and reasonable basis.

"(b) An owner or operator of an airport may charge fees to off-airport operators provided such fees are reasonable and not unjustly discriminatory, taking into account type of use, volume of use, extent of use, and difference in costs incurred and services provided such users and businesses operating within the air terminal or on property leased from the airport.

"(c) Any person aggrieved by a violation of this section, or any regulation issued pursuant thereto, may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the objectives of this section."●

● Mr. WEICKER. Mr. President, I rise today to join my colleague from Florida in introducing a bill to assure that passengers in our air transportation system continue to have access to courtesy vehicles operated at airports. This legislation assures the right of "off airport" operators, including car rental, parking lot, hotel, or tour businesses, to access over airport roadways in order to pickup and discharge passengers. In turn, the airports can charge the "off-airport" operators fees for this use, provided that the fees are reasonable and not unjustly discriminatory based on volume, extent and type of use.

Mr. President, this legislation is necessary to insure that we keep the "off-airport" businesses in business. Some airports have started charging car rental companies 7 to 10 percent of their gross receipts. This amount is unreasonable and unmanageable for these companies, many of which are family-run businesses in my State. They are willing to pay reasonable fees but there has to be some limit on what the airports can charge.

These smaller "off-airport" businesses do not receive the benefits that the larger companies enjoy, including concessions and advertising right in the airport. It is the smaller companies, like Thrifty-Rent-a-Car and Alamo, which provide competition for the big companies and keep rental rights down. The result of heavy fees will be that the cost will be passed on to the consumer. Once the "off-airport" businesses are forced to raise their rates, the "on-airport" companies most likely will raise their rates as well.

Mr. President, as I mentioned before, the Alamos and Thriftys are willing to pay for the ability to pickup and dropoff customers. But the fees must be reasonable. This legislation not only will benefit the small businessman, but the traveling public.

I commend the Senator from Florida for introducing this fair, consumer-beneficial legislation.●

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By Mr. EVANS (for himself, Mr. BOREN, Mr. DOLE, Mr. PROXMIRE, Mr. DOMENICI, Mr. EXON, Mr. HUMPHREY, Mr. BENTSEN, Mr. GRAMM, Mr. PRYOR, Mrs. KASSEBAUM, Mr. NICKLES, Mr. ROTH, Mr. BOND, Mr. PRESSLER, Mr. GARN, Mr. TRIBLE, Mr. MCCAIN, Mr. KASTEN, Mr. KARNES, Mr. HECHT, Mr. HELMS, Mr. THURMOND, Mr. MURKOWSKI, Mr. SYMMS, Mr. ARMSTRONG, Mr. DANFORTH, Mr. QUAYLE, Mr. LUGAR, Mr. WILSON, Mr. WALLOP, Mr. GRASSLEY, Mr. COHEN, Mr. WARNER, Mr. MCCLURE, Mr. SPECTER, Mr. CHAFEE, Mr. HATCH, Mr. MCCONNELL, Mr. BOSCHWITZ, and Mr. RUDMAN):

S. 1835. A bill to provide that each title of any bill or joint resolution making continuing appropriations that is reported by a committee of conference and is agreed to by both Houses of the Congress in the same form during a 2-year period shall be presented as a separate joint resolution to the President; to the Committee on Rules and Administration.

INDIVIDUAL APPROPRIATION ACT

Mr. EVANS. Mr. President, I am introducing today with 40 of our colleagues the Individual Appropriations Act. By introducing the bill today, we hope to have an opportunity for a hearing before the Rules Committee as well as to make all Senators aware that we plan to offer it as an amendment to the next continuing resolution to be considered by the Senate.

Many of the Senators remember that I introduced a somewhat similar measure not long ago and it had very substantial support on the floor.

Generally, the act directs the Senate-House committee of conference to divide the continuing resolution into titles, where titles correspond to regular appropriation bills which are customary and which have been recognized in the 1974 Budget Act.

Specifically, the Individual Appropriations Act—

Directs the conference committee to report each title of a continuing resolution as a separate bill or resolution, where a title is defined as a regular appropriations bill. Each separate title is then considered separately by each body under the procedures for considering conference reports.

It applies only to continuing resolutions making appropriations for a period of 30 days or longer, and does not apply to supplemental appropriations.

It defines a continuing resolution as a bill that includes two or more regular appropriation bills.

It directs the responsible official of the House where the bill originated to assign a bill number to each separated title.

It establishes a point of order—50-vote—stipulating that continuing resolutions shall not be considered unless: First, each title corresponds to one of the 13 regular appropriation bills; and second, any general provisions of a continuing resolution are contained in its appropriate title as determined by conference committee—rather than a separate bill.

It retains the constitutionally mandated two-thirds veto override by both Houses of Congress.

It includes a 2-year sunset clause, where the act's provisions are effective for fiscal years 1989 and 1990. The provisions will also become effective for fiscal year 1988, if the act is signed into law prior to the adoption of the final fiscal year 1988 continuing resolution.

Mr. President, this legislation differs dramatically from the amendment offered to the debt ceiling resolution on July 31, 1987, which directed the enrolling clerk to divide the continuing resolution. By shifting the separating responsibility from the enrolling clerk to the committee on conference and revising definitions we have resolved the constitutional and procedural concerns noted during the floor debate.

Mr. President, I join with a number of our colleagues in renewed expectations that the budget summit will result in substantial deficit reduction. Regardless of the success of this effort, however, the budget process still needs fixing.

One of the most visible erosions of the budget process is the increasing reliance on the continuing resolution. We have come to the point, especially last year, where we lumped all 13 of the traditional appropriations bills together in one massive continuing resolution and sent to the President $580 billion worth of spending. In doing so

we have virtually eliminated the responsible use of the veto by a Chief Executive.

No one, either the current President or future Presidents, could afford to engage in a veto knowing that the Government of the United States would literally come to a halt if he exercised that veto.

Under the 1974 Budget Act, Congress and the President reconfirmed their commitment to a process that requires 13 separate appropriations bills. A continuing resolution was to be used as a temporary measure when Congress could not reach agreement on an appropriation bill. The continuing resolution would provide for continued spending for a limited period of time until a final appropriations act could be passed.

However, in recent years the continuing resolution process has been abused. Looking at last year, we reached an agreement on nearly all the individual appropriation bills. They could have been brought back as separate conference reports to the Senate and the House, but a conscious decision was made to put them all together in what really is not a continuing resolution at all but what is, in reality, a broad, huge, omnibus appropriations bill. And this year looks as if it will be a repeat of last year's performance.

Last year was not a unique case. Fiscal year 1977, the first full year under our current budget process, was the first, last and only year that all 13 appropriation bills were adopted in their own right since the inception of the 1974 Budget Act. The last 3 years are a good indication of the problem; fiscal year 1985—eight bills were included in the continuing resolution; fiscal year 1986—seven bills were included; and last year, as I have already noted, all 13 bills were melded together into a continuing resolution.

Mr. President, every time we debate line-item veto proposals, opponents express concern that such a proposal will upend "constitutional checks and balances." I understand and respect their concern. With the Individual Appropriations Act, however, we address what is an equally serious concern of the constitutional imbalance created by sending the President a $500 billion-plus continuing resolution and saying "take it or leave it."

The individual Appropriations Act should be enthusiastically adopted by the Senate.

Mr. President, I ask unanimous consent that the test of the bill and a section-by-section description be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1835

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Individual Appropriations Act".

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) The term "bill or joint resolution making continuing appropriations" means a bill or joint resolution that includes two or more regular appropriation bills.

(2) The term "title" means any division of a bill or joint resolution making continuing appropriations that is designed as a title.

(3) The term "regular appropriation bill" means any annual appropriation bill (within the meaning given to such term in section 307 of the Congressional Budget Act of 1974 (2 U.S.C. 638)) making appropriations, otherwise making funds available, or granting authority, for any of the following categories of project and activities:

(A) Agriculture, rural development, and related agencies programs.

(B) The Departments of Commerce, Justice, and State, the judiciary, and related agencies.

(C) The Department of Defense.

(D) The government of the District of Columbia and other activities chargeable in whole or in part against the revenues of the District.

(E) The Departments of Labor, Health and Human Services, and Education, and related agencies.

(F) The Department of Housing and Urban Development, and sundry independent agencies, boards, commissions, corporations, and offices.

(G) Energy and water development.

(H) Foreign assistance and related programs.

(I) The Department of the Interior and related agencies.

(J) Military construction.

(K) The Department of Transportation and related agencies.

(L) The Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies.

(M) The legislative branch.

SEC. 3. CONSIDERATION OF CERTAIN JOINT RESOLUTIONS.

(a) SEPARATE CONFERENCE REPORTS FOR EACH TITLE.—(1)(A) Notwithstanding any other provision of law, when any bill or joint resolution making continuing appropriations for a period of 30 days or more is agreed to by a committee of conference on such bill or joint resolution, the committee of conference shall prepare and submit to each House of Congress a separate conference report for each title of the bill or joint resolution together with any amendments in disagreement corresponding to each title.

(b) SEPARATE BILLS FOR EACH TITLE.—Each separate title of a bill or joint resolution reported by a committee of conference pursuant to subsection (a) shall, at the direction of the responsible official of the originating body when submitted to that body, be assigned a bill number and shall be considered separately.

SEC. 4. POINT OF ORDER.

Notwithstanding any other provision of law, the Standing Rules of the Senate, or the Rules of the House of Representatives—

(1) it shall not be in order to consider any bill or joint resolution making continuing appropriations for a period of 30 days or more unless each title of the joint resolution corresponds to a regular appropriation bill, and

(2) any general provisions of the bill or joint resolution are contained in the appropriate title or titles of the bill or joint resolution (rather than in a separate title).

SEC. 5. EXCEPTION.

The provisions of this Act with respect to the consideration of a bill or joint resolution making continuing appropriations shall not be construed as applying to a bill or joint resolution making supplemental appropriations.

SEC. 6. EFFECTIVE DATE.

The provisions of this Act shall apply to a bill or joint resolution making continuing appropriations agreed to by the Congress providing appropriations for fiscal years 1988, 1989 and 1990.

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INDIVIDUAL APPROPRIATIONS ACT (REVISED)—SECTION-BY-SECTION ANALYSIS

In general, the revised "Individual Appropriations Act" directs the Senate-House committee of conference to divide the continuing resolution into titles, where titles correspond to regular appropriation bills.

(Note: The initial proposal offered to legislation increasing the debt ceiling on July 31, 1987, generally directed the enrolling clerk to divide a continuing resolution by titles when prepared for presentation to the President.)

*Section 1:* Short title.

*Section 2*: Definitions.

(1) identifies a "bill or joint resolution making continuing appropriations" as one which includes two or more regular appropriation bills.

(2) defines "title" as a division of such bill or joint resolution and designated as title.

(3) identifies a "regular appropriation bill" as those reported under the jurisdiction of the subcommittees of the Committees on Appropriations.

*Section 3*: Consideration of certain joint resolutions.

(a) requires the committee of conference to report a separate conference report for each title of a bill making appropriations for a period of 30-days or more. Each title is reported with any amendments in disagreement.

(b) directs the responsible official of the House where the bill originated to assign bill number.

(Note: Once bill reaches the full House and Senate, separate bill is considered like any other conference agreement.)

*Section 4*: Point-of Order.

(1) against bills making continuing appropriations for 30 days or more where titles do not correspond to a regular appropriation bill.

(2) against bill that does not place general provisions within appropriate title.

*Section 5*: Reinforces definition clarifying that this act does not apply to bills making supplemental appropriations.

*Section 6*: Act effective for fiscal years 1989 and 1990 (also FY88, if signed into law before adoption of final FY88 continuing resolution).

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By Mr. PRYOR (for himself, Mr. SPECTER, Mr. BUMPERS, Mr. THURMOND, Mr. WILSON, Mr. BREAUX, Mr. HEFLIN, Mr. HELMS, Mr. D'AMATO, Mr. BURDICK, Mr. HEINZ, Ms. MIKULSKI, Mr. DOLE, Mr. CHILES, Mr.

NUNN, Mrs. KASSEBAUM, Mr. SANFORD, Mr. FOWLER, Mr. CONRAD, and Mr. LEAHY):

S. 1836. A bill to amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such act; to the Committee on Agriculture, Nutrition, and Forestry.

POULTRY PRODUCERS FINANCIAL PROTECTION ACT

● Mr. PRYOR. Mr. President, I am very pleased to introduce the Poultry Producers Financial Protection Act of 1987. This bill amends the Packers and Stockyards Act of 1921 to extend similar financial protection to poultry producers as enjoyed by red meat producers since 1976. It will also clarify a long standing dispute over the jurisdiction of the Packers and Stockyards Administration with respect to poultry and poultry products.

The legislation that I am introducing today represents a long-sought compromise between poultry producers, integrators and processors. The poultry industry has negotiated for 2 years on this legislation and the results are contained in this bill. As a result, this package has the strong support of the American Farm Bureau Federation, the National Grange, the National Broiler Council, and the National Turkey Federation. Due to this industrywide support, I expect this bill to move quickly since there is no opposition.

Currently, poultry producers are not afforded prompt payment and trust protection comparable to that provided to livestock producers under the act. Other segments of agriculture have similar protection. The Perishable Agricultural Commodities Act of 1984 provided trust protection for fresh fruit and vegetable growers. The Bankruptcy Reform Act of 1984 provided payment assurance for grain producers in case of grain elevator bankruptcy. Finally the 1984 supplemental appropriations bill was amended to require the Government to pay poultry processors within 7 days for poultry products. Poultry growers both want and need this type of protection.

Currently if a live poultry dealer declares bankruptcy, the poultry grower is in the position of an unsecured creditor. The bill will address this problem by providing for a live poultry dealer trust provision. Under the bill, a trust will be established for the benefit of all unpaid poultry growers and sellers, protecting them from circumstances which would inflict heavy losses upon an important segment of the agricultural economy. This provision places the grower in the position of a secured creditor in case of buyer bankruptcy.

Concern has been raised over the length of time some poultry producers are forced to wait for payment for their product or services. During this delay, producers must continue to pay their own operating and other expenses. This problem can cost the producer cash discounts or other interest charged due to the resulting cashflow restrictions. This bill would correct this inequity by requiring that all poultry growers under a growout contract must be paid for their products or services by the 15th day following the week in which the poultry is slaughtered. However, in the case of a cash sale, payment must be made by the close of the next business day—the same requirement as exists for red meat.

This bill would provide the Packers and Stockyards Administration the administrative authority to enforce only the prompt payment and trust provisions. This jurisdiction will expedite the process of enforcing these provisions, and is similar to the authority provided to the Packers and Stockyards Administration for the red meat industry.

With regards to other live poultry transactions, the Packers and Stockyards Administration will retain jurisdiction as the act currently provides. These transactions include things like weighing practices and contract compliance. The Packers and Stockyards Administration must continue to enforce these provisions through U.S. district court.

Finally, the bill clarifies that the Federal Trade Commission and not the Packers and Stockyards Administration would have jurisdiction over the marketing practices of poultry products and this uncertainty has led to costly litigation over the jurisdictional issue. It is logical for the Federal Trade Commission to regulate poultry products, like other food items, in an effort to avoid duplicative regulations.

As I mentioned earlier, this compromise bill will correct the problems which poultry producers and poultry processors are facing today. Its quick enactment will remove the possibility of any more poultry producers suffering financial losses caused by failure of their buyers. I would encourage my colleagues to join in this effort by cosponsoring the bill and supporting it when it reaches the floor for consideration. I would ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1836

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Poultry Producers Financial Protection Act of 1987".

SEC. 2. DEFINITIONS.

Section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182), is amended—

(1) in paragraph (5) by striking "and" at the end;

(2) by redesignating paragraph (6) as paragraph (11); and

(3) by inserting after paragraph (5) the following:

"(6) The term 'poultry' means chickens, turkeys, ducks, geese, and other domestic fowl;

"(7) The term 'poultry product' means any product or by-product of the business of slaughtering poultry and processing poultry after slaughter;

"(8) The term 'poultry grower' means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry;

"(9) The term 'poultry growing arrangement' means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter;

"(10) The term 'live poultry dealer' means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce; and".

SEC. 3. UNLAWFUL PRACTICES.

Section 202 of the Packers and Stockyards Act, 1921 (7 U.S.C. 192), is amended—

(1) by striking "It shall be unlawful with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry or poultry products for any packer or any live poultry dealer or handler to:" and inserting "It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:"; and

(2) in subdivision (c) by striking "Sell or otherwise transfer to or for any other packer or any live poultry dealer or handler, or buy or otherwise receive from or for any other packer or any live poultry dealer or handler, any article for the purpose or with the effect of apportioning the supply between any such packers," and inserting "Sell or otherwise transfer to or for any other packer or any live poultry dealer, or buy or otherwise receive from or for any other packer or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons,".

SEC. 4. STATUTORY TRUST ESTABLISHED.

The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended by inserting after section 206 the following:

"SEC. 207. (a) It is hereby found that a burden on and obstruction to commerce in poultry is caused by financing arrangements under which live poultry dealers encumber, give lenders security interest in, or place liens on, poultry obtained by such persons by purchase in cash sales or by poultry growing arrangements, or on inventories of or receivables or proceeds from such poultry or poultry products therefrom, when payment is not made for the poultry and that such financing arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruc-

tion to commerce in poultry and protect the public interest.

"(b) All poultry obtained by a live poultry dealer, by purchase in cash sales or by poultry growing arrangement, and all inventories of, or receivables or proceeds from such poultry or poultry products derived therefrom, shall be held by such live poultry dealer in trust for the benefit of all unpaid cash sellers or poultry growers of such poultry, until full payment has been received by such unpaid cash sellers or poultry growers, unless such live poultry dealer does not have average annual sales of live poultry, or average annual value of live poultry obtained by purchase or by poultry growing arrangement, in excess of $100,000.

"(c) Payment shall not be considered to have been made if the cash seller or poultry grower receives a payment instrument which is dishonored.

"(d) The unpaid cash seller or poultry grower shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within 30 days of the final date for making payment under section 410, or within 15 business days after the seller or poultry grower has received notice that the payment instrument promptly presented for payment has been dishonored, the seller or poultry grower has not preserved his trust under this section. The trust shall be preserved by giving written notice to the live poultry dealer and by filing such notice with the Secretary.

"(e) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.".

SEC. 5. LIABILITY AND ENFORCEMENT.

Section 308(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 209(a)), is amended by inserting "or purchase or sale of poultry, or relating to any poultry growing arrangement," after "livestock,".

SEC. 6. RECORDS AND RESPONSIBILITY.

Sections 401 and 403 of the Packers and Stockyards Act, 1921 (7 U.S.C. 221, 223), are each amended by striking, "or any live poultry dealer or handler," each place it appears and inserting ", any live poultry dealer,".

SEC. 7. POWERS OF FEDERAL TRADE COMMISSION AND SECRETARY OF AGRICULTURE.

Section 406 of the Packers and Stockyards Act, 1921 (7 U.S.C. 227), is amended—

(1) in subsection (b)—

(A) in the first sentence of paragraph (2)—

(i) by striking "or poultry products"; and

(ii) by inserting "or" before "livestock products in unmanufactured form."; and

(B) by amending paragraph (3) to read as follows:

"(3) Over all transactions in commerce in margarine, oleomargarine, or poultry products and over retail sales of meat, meat food products and livestock products in unmanufactured form.";

(2) by amending subsection (d) to read as follows:

"(d) The Secretary of Agriculture shall exercise power or jurisdiction over oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form only when he determines, in any investigation of, or any proceeding for the prevention of, an alleged violation of this Act, that such action is necessary to avoid impairment of his power or jurisdiction over acts or transactions involving livestock, meat, meat food products, livestock products in unmanufactured form, or poultry other than retail sales thereof. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Secretary shall notify the Federal Trade Commission of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with respect to acts or transactions involving oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form if the Commission within 10 days from the date of receipt of such notice notifies the Secretary that there is pending in the Commission an investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission involving the same subject matter.";

(3) by redesignating subsection (e) as subsection (f);

(4) by inserting after subsection (d) the following:

"(e) The Secretary of Agriculture shall exercise jurisdiction over poultry products only in a proceeding brought under section 207 or section 410 when such action is necessary to avoid impairment of his jurisdiction."; and

(5) in subsection (f), as so redesignated, by striking "and (d)" and inserting ", (d), and (e)".

SEC. 8. AUTHORITY OF SECRETARY TO REQUEST INJUNCTIVE RELIEF.

Section 408 of the Packers and Stockyards Act, 1921 (7 U.S.C. 228a), is amended by inserting after "unmanufactured form," the following: "or live poultry, or has failed to pay any poultry grower what is due on account of poultry obtained under a poultry growing arrangement,".

SEC. 9. PROMPT PAYMENT FOR PURCHASE OF POULTRY.

The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended—

(1) by redesignating sections 410 and 411 as sections 414 and 415, respectively; and

(2) by inserting after section 409 the following:

"SEC. 410. (a) Each live poultry dealer obtaining live poultry by purchase in a cash sale shall, before the close of the next business day following the purchase of poultry, and each live poultry dealer obtaining live poultry under a poultry growing arrangement shall, before the close of the fifteenth day following the week in which the poultry is slaughtered, deliver, to the cash seller or poultry grower from whom such live poultry dealer obtains the poultry, the full amount due to such cash seller or poultry grower on account of such poultry.

"(b) Any delay or attempt to delay, by a live poultry dealer which is a party to any such transaction, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for poultry obtained by poultry growing arrangement or purchased in a cash sale, shall be considered an 'unfair practice' in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term 'unfair practice' as used in this Act.

"(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

"SEC. 411. (a) Whenever the Secretary has reason to believe that any live poultry dealer has violated or is violating any provision of section 207 or section 410 of this Act, he shall cause a complaint in writing to be served upon the live poultry dealer, stating his charges in that respect, and requiring the live poultry dealer to attend and testify at a hearing at a time and place designated therein, at least 30 days after the service of such complaint; and at such time and place there shall be afforded the live poultry dealer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing, the Secretary may amend the complaint; but in case of any amendment adding new charges, the hearing shall, on the request of the live poultry dealer, be adjourned for a period not exceeding 15 days.

"(b) If, after such hearing, the Secretary finds that the live poultry dealer has violated, or is violating, any provisions of section 207 or section 410 of this Act covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the live poultry dealer an order requiring such live poultry dealer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than $20,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business: *Provided, however,* That in no event can the penalty assessed by the Secretary take priority over or impede the ability of the live poultry dealer to pay any unpaid cash seller or poultry grower. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General, who may recover such penalty by an action in the appropriate District Court of the United States.

"(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 412, the Secretary, at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the live poultry dealer to be heard, may amend or set aside the report or order, in whole or in part.

"(d) Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914.

"SEC. 412. (a) An order made under section 411 shall be final and conclusive unless within 30 days after service the live poultry dealer appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such live poultry dealer will pay the costs of the proceedings if the court so directs.

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section

2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the live poultry dealer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

"(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

"(e) The court may affirm, modify, or set aside the order of the Secretary.

"(f) If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

"(g) If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the live poultry dealer, and his officers, directors, agents, and employees form violating the provisions of such order or such order as modified.

"(h) The court of appeals shall have jurisdiction which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, United States Code, if such writ is duly applied for within 60 days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction, unless so ordered by the Supreme Court.

"SEC. 413. Any live poultry dealer, or any officer, director, agent, or employee of a live poultry dealer, who fails to obey any order of the Secretary issued under the provisions of section 411, or such order as modified—

"(1) after the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time;

"(2) after the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

"(3) after such order, or such order as modified, has been sustained by the courts as provided in section 412;

shall on conviction be fined not less than $1,000 nor more than $20,000. Each day during which such failure continues shall be deemed a separate offense.".

SEC. 10. REPEALED.

Title V of the Packers and Stockyards Act, 1921 (7 U.S.C. 218-218d), is repealed.

SEC. 11. CONSTRUCTION

(a) GENERAL RULE.—The amendments made by this Act to the Packers and Stockyard Act, 1921 shall not be construed to limit or otherwise affect the power or jurisdiction of the Federal Trade Commission under the Federal Trade Commission Act to prevent the use of—

(1) unfair methods of competition in or affecting commerce, and

(2) unfair and deceptive acts or practices in or affecting commerce,

involving poultry products.

(b) SECRETARY'S AUTHORITY.—Subsection (a) shall not be construed to limit or otherwise affect the authority of the Secretary of Agriculture under section 406(e) as amended of the Packers and Stockyard Act, 1921.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days after the date of the enactment of this Act.●

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By Mr. WILSON:

S.J. Res. 210. A joint resolution to designate the period commencing February 8, 1988, and ending February 14, 1988, as "National Burn Awareness Week"; referred to the Committee on the Judiciary.

NATIONAL BURN AWARENESS WEEK

● Mr. WILSON. Mr. President, I rise today to speak of a problem little noticed in America—except by those who are its victims. For them, it is literally life-shattering in its implications. I rise to introduce a Senate joint resolution designating the week of February 8, 1988, as "National Burn Awareness Week." And in so doing, I would suggest that this is but the first small step on a journey of many miles, a journey which must be taken by all of us who live in a country with the worst burn problem of any industrialized nation in the world.

Burns exact a tremendous toll of human life, suffering, disability, and financial loss. Burn injuries continue to be one of the leading causes of death in the United States. Of the 2 million people who are victims of burn injury each year, 70,000 are hospitalized and another 12,000 suffer death as a result of their burns. An even more tragic statistic of this problem is the fact that children, elderly, and the disabled represent a majority of burn victims, with a death rate of five times that of any other group. Finally, the severe psychological impact of burn rehabilitation for the victim cannot be measured in simple economic terms.

Each year millions of dollars are spent trying to remedy the effects of burns and burn-related incidents. Recent studies conclude, however, that approximately 75 percent of all burns could be prevented by proper education of children and adults and the utilization of appropriate design intervention and technology, especially in the prevention of scald burns. Furthermore, a general public awareness of the need for smoke detectors and home fire escape plans in combination with an understanding of the risk associated with specific items in our home environment—that is, alternative heating, matches and lighters in the hands of children, damaged electric cords, and so forth—can have a considerable influence on the reduction of injury and loss of life.

For this reason, the resolution provides for a public awareness program designed to familiarize the public with methods of burn prevention, treatment, and rehabilitation.

Mr. President, in closing, I want to commend Mr. Fred Jameson of the Institute for Fire and Burn Education for his efforts to educate the American public about burn care and prevention. Mr. Jameson first brought the seriousness of the burn problem to my attention 2 years ago. At that time, I introduced a resolution—similar to the one I am offering today—to raise the awareness of the American public about the devastating impact of this silent epidemic. During that time much has been accomplished, but we can and must do more. I am convinced that we can reduce the incidence of burn injury in this country by educating people to recognize fire hazards and showing them how to practice precautions.

I ask my colleagues support in this resolution by cosponsoring the establishment of "National Burn Awareness Week."

Mr. President, I ask that the text of the resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 210

Whereas the burn problem in the United States is the worst of any industrialized nation in the world;

Whereas burn injuries are one of the leading causes of accidental death in the United States;

Whereas every year approximately two million people are victims of burn injury in the United States;

Whereas of these injuries, seventy thousand are hospitalized and account for nine million disability days annually;

Whereas approximately twelve thousand people die from burn injuries annually;

Whereas the rehabilitative and psychological impact of burns are devastating;

Whereas children, the elderly, and the disabled are most likely to suffer serious burns;

Whereas it is estimated that approximately 75 percent of all burns could be prevented by proper education of children and adults and the appropriate use of design and technology;

Whereas a general public awareness of the need for smoke detectors and home fire escape plans, in combination with an understanding of the risk associated with items in our home environment, can influence the reduction of injury and loss of life; and

Whereas there is a need for an effective national program that deals with all aspects of burn injuries: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the period commencing February 8, 1988, and ending February 14, 1988, is designated as "National Burn Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe such week with appropriate programs and activities.●

## ADDITIONAL COSPONSORS

S. 368

At the request of Mr. MATSUNAGA, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 368, a bill to amend the Federal Food, Drug, and Cosmetic Act to ban the reimportation of drugs in the United States, to place restrictions on drug samples, to ban certain resales of drugs purchased by hospitals and other health care facilities, and for other purposes.

S. 889

At the request of Mr. GORE, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 889, a bill to amend the Communications Act of 1934 to provide for fair marketing practices for certain encrypted satellite communications.

S. 1440

At the request of Mr. EVANS, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 1440, a bill to provide consistency in the treatment of quality control review procedures and standards in the Aid to Families with Dependent Children, Medicaid, and Food Stamp programs; to impose a temporary moratorium for the collection of penalties under such programs, and for other purposes.

S. 1663

At the request of Mr. DODD, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1663, a bill to reauthorize the Child Abuse Prevention and Treatment Act and other related Acts dealing with adoption opportunities and family violence.

S. 1673

At the request of Mr. CHAFEE, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 1673, a bill to amend title XIX of the Social Security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

S. 1777

At the request of Mr. ARMSTRONG, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 1777, a bill to amend title II of the Social Security Act to phase out the earnings test over a 5-year period for individuals who have attained retirement age, and for other purposes.

SENATE JOINT RESOLUTION 146

At the request of Mr. WIRTH, the names of the Senator from South Dakota [Mr. DASCHLE], the Senator from South Dakota [Mr. PRESSLER] and the Senator from Virginia [Mr. TRIBLE] were added as cosponsors of Senate Joint Resolution 146, a joint resolution designating January 8, 1988, as "National Skiing Day."

SENATE JOINT RESOLUTION 203

At the request of Mr. D'AMATO, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of Senate Joint Resolution 203, a joint resolution calling upon the Soviet Union immediately to grant permission to emigrate to all those who wish to join spouses in the United States.

AMENDMENT NO. 1107

At the request of Mr. ADAMS, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of amendment No. 1107 proposed to S. 1485, a bill to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes.

## SENATE RESOLUTION 310—TO EXPRESS THE OPPOSITION OF THE SENATE TO THE RULING OF THE NUCLEAR REGULATORY COMMISSION

Mr. BYRD (for Mr. GORE) submitted the following resolution; which was referred to the Committee on Environment and Public Works:

S. RES. 310

*Resolved,* That it is the sense of the Senate that no operating license under section 103 or 104b. of the Atomic Energy Act of 1954 should be issued (or changed) for a nuclear production or utilization facility unless such license requires the participation of local and State authorities in emergency evacuation plans for such facility.

● Mr. GORE. Mr. President, I rise today to introduce a resolution opposing the Nuclear Regulatory Commission's decision to consider nuclear powerplant evacuation plans whether or not State and local authorities participate in emergency evacuation planning.

I strongly oppose the NRC's attempts to remove State and local authorities from participating in emergency evacuation planning. States have a legitimate role in the nuclear licensing process, and this rule change is a misguided attempt by the NRC to subvert that role at the expense of an appropriate concern for safety. By usurping the rights of the States, the NRC has put expediency ahead of public safety.

Despite the financial pressures from utilities and investors, safety must be the paramount concern in the licensing of nuclear powerplants. Toward that end, the Nuclear Regulatory Commission was vested with the responsibility of ensuring public health and safety. I am deeply troubled that the NRC has chosen to eliminate a critical regulation underpinning emergency planning—State and local participation in emergency evacuation planning.

The 10 mile evacuation rule is essential for adequate emergency planning. This rule rests upon two critical principles: safety and local control. The Federal Government has a responsibility to ensure the safety of nuclear powerplants. At the same time, States within the 10-mile radius must be part of any safety and evacuation planning. States must be afforded adequate protection against unwarranted or unnecessary infringement on their rights and the rights of their citizens.

Realistic evacuation planning is impossible without State and local participation. An NRC-approved utility evacuation plan cannot replace State and local emergency planning. Not only does removing State and local authorities from this process instill public doubt, it also sets a dangerous precedent. The NRC ruling to remove State and local governments from emergency evacuation planning around nuclear powerplants usurps their role in protecting public health and safety. I strongly oppose such a maneuver.

Changing the emergency planning regulations to deny States meaningful participation in the licensing process undermines their ability to ensure the health and safety of their citizens. I urge my colleagues to join me in sending a clear signal to the NRC that such shortsighted changes will not be condoned.●

## AMENDMENTS SUBMITTED

### AIRLINE PASSENGER PROTECTION ACT

### METZENBAUM (AND OTHERS) AMENDMENT NO. 1108

Mr. METZENBAUM (for himself, Mr. THURMOND, and Mrs. KASSEBAUM) proposed an amendment to the bill (S. 1485) to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes; as follows:

At the end of the bill, add the following:

SECTION 1. (a) PROHIBITION OF HARD-TO-DETECT FIREARMS.—Section 922 of title 18, United States Code, is amended by adding at the end thereof a new subsection (p) as follows:

"(p)(1) It shall be unlawful for any person to manufacture, import, sell, possess, trans-

fer, receive, ship, or deliver any firearm that the Secretary determines, after consultation with the administrator of the Federal Aviation Administration.

"(A) is not as detectable as the Minimum Security Standard Exemplar, after removal of grips, stocks, and magazines, by walk-through metal detectors approved by the Federal Aviation Administration for use at airports in the United States; or

"(B) is not identifiable as a firearm or readily detectable by cabinet X-ray systems, as defined in regulations prescribed by the Food and Drug Administration (21 C.F.R. 1020.40(b)(3)) designed for inspection of carry-on baggage; *Provided, however,* nothing in this section shall be construed as requiring that the Federal Aviation Administration utilize the Minimum Security Standard Exemplar as a Federal Aviation Administration detection standard.

"(2) As used in this section—

"(A) the term 'firearm' does not include a firearm described in subsection 921(a)(3)(B) of this title; and

"(B) the term 'Minimum Security Standard Exemplar' means a firearm substitute that resembles a North American Arms .22 caliber rim fire weapon, is 4½ inches in length, 2 inches in height, is made of material type 17-4 PH stainless steel or 1040 mild steel, and weighs 8 ounces."

(b) Section 925 of title 18, United States Code, is amended by adding at the end thereof a new subsection (f) as follows:

"(f)(1) The Secretary shall not authorize, under subsection (d) of this section, the importation or bringing in of any firearm that—

(A) is not as detectable as the Minimum Security Standard Exemplar, after removal of grips, stocks, and magazines, by walk-through metal detectors approved by the Federal Aviation Administration for use at airports in the United States; or

"(B) is not identifiable as a firearm, or readily detectable by cabinet x-ray systems, as defined in regulations prescribed by the Food and Drug Administration (21 C.F.R. 1040.20(b)(3)) designed for inspection of carry-on baggage.

"(2) As used in this section, the terms 'firearm' and 'Minimum Security Standard Exemplar' have the meanings given those terms in section 922(p) of this title.".

(c) The first sentence of section 925(d) of title 18, United States Code, is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subsection (f) of this section, the Secretary".

(d) The Administrator of the Federal Aviation Administration shall conduct such research and development as may be necessary to improve the effectiveness of airport security metal detectors and airport security x-ray systems with respect to detection of firearms prohibited by section 922(p) of title 18, United States Code.

(e) When appropriate because of changed technology, the Secretary of the Treasury shall submit to the Congress proposed legislation (including technical and conforming provisions) to amend the definition of the term "Minimum Security Standard Exemplar" contained in the amendments made by this Act.

(f) Except as provided in subsection (g), the amendments made by this section shall take effect upon the enactment of this Act.

(g) It shall be a bar to prosecution for an offense involving the possession or receipt of a firearm in violation of subsection (p) of section 922 that the defendant first possessed or received the firearm before the date of enactment.

## LAUTENBERG AMENDMENTS NOS. 1109 AND 1110

Mr. LAUTENBERG proposed two amendments to the bill S. 1485, supra; as follows:

AMENDMENT NO. 1109

On page 5, afer line 23, insert the following new paragraph:

"(5) to prevent any carrier from changing the rules or requirements of a frequent flier program to the general detriment of the participants in such program without reasonable notice, or, to prevent a participant in such program from utilizing, during a reasonable period of time after a change in the rules or requirements of such program has become effective, credits accumulated by the participant under the rules or requirements as in effect before such change."

AMENDMENT NO. 1110

On page 5, strike lines 22 to 23, and insert in lieu thereof the following:

"transportation a notice of the minimum percentage of seats on such transportation available at the advertised fare."

## METZENBAUM AMENDMENT NO. 1111

Mr. METZENBAUM proposed an amendment to the bill S. 1485, supra; as follows:

On page 3, line 15, add the following immediately after the period: "Such summary information shall be displayed to the public in a clear, concise, and visible manner at all public airports.".

At the end of the bill, add the following:

SEC. . (a) The Secretary of Transportation shall, within 90 days following the date of enactment of this Act, take such action as may be necessary to require each such commercial air carrier to disclose to each passenger or his or her agent, at the time of reserving or purchasing a ticket for a flight, the fact that a restroom will not be available on such flight, and to disclose, upon request a description of the type of aircraft on which such passenger will be flying.

SEC. . (b) The Secretary of Transportation, within 90 days following the date of enactment of this Act, shall, by regulation, prohibit any air carrier from cancelling, on the basis of any economic reason, any flight unless such air carrier—

(1) made a reasonable effort to notify each passenger of such cancellation at least 24 hours prior to the scheduled departure time for such flight; and

(2) makes available to each such passenger similar services within a reasonable time as determined by the Secretary of Transportation by regulation.

(3) For purposes of this section, the term "economic reason" does not refer to the cancellation of a flight in order to use the equipment assigned to that flight to replace other equipment, the timely departure of which has been prevented due to mechanical failure or other factors related to safety.

## EXON AMENDMENT NO. 1112

Mr. EXON proposed an amendment to the bill S. 1485, supra; as follows:

On page 5, line 17, strike out "; and" and insert in lieu thereof a semicolon.

On page 5, line 23, strike out the period and insert in lieu thereof a semicolon and the word "and".

On page 5, between lines 23 and 24, insert the following:

"(5) to establish a system to ensure that any passenger holding an unused ticket on any air carrier which has filed a petition under chapter 11 of title 11, United States Code, and which has ceased service, is provided air transportation on another air carrier, on a standby basis, at its regular coach fare with the passenger entitled to redeem with the replacement air carrier the unused ticket purchased from the air carrier which ceased service as a credit against the fare charged by such replacement air carrier."

# EXTENSION OF CERTAIN HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

## ARMSTRONG (AND OTHERS) AMENDMENT NO. 1113

Mr. ARMSTRONG (for himself, Mr. SHELBY, and Mr. WILSON) proposed an amendment to the joint resolution (S.J. Res. 209) to provide for the extension of certain programs relating to housing and community development, and for other purposes; as follows:

After line 7 on page 1, add the following:

SEC. 2. (a) REPEALS.—Each of the following provisions of law is repealed:

(1) Section 217 of the National Housing Act.

(2) The fifth sentence of section 221(f) of the National Housing Act.

(3) Section 244(d) and the last sentence of section 244(h) of the National Housing Act.

(4) The last sentence of section 245(a) of the National Housing Act.

(5) The second sentence of section 809(f) of the National Housing Act.

(6) The second sentence of section 810(k) of the National Housing Act.

(7) The second sentence of section 1002(a) of the National Housing Act.

(8) The second sentence of section 1101(a) of the National Housing Act.

(b) AMENDMENT.—The first sentence of section 2(a) of the National Housing Act, as amended by the first section of this joint resolution, is amended by striking out "and not later than November 15, 1987".

(c) CREDIT LIMITATION.—Any new credit authority (as defined in section 3 of the Congressional Budget and Impoundment Control Act of 1974) which is provided by this joint resolution shall be effective only to such extent or in such amounts as may be approved in appropriation Acts.

# VETERANS' HOUSING REHABILITATION AND PROGRAM IMPROVEMENT ACT

## CRANSTON (AND MURKOWSKI) AMENDMENT NO. 1114

Mr. BYRD (for Mr. CRANSTON) (for himself and Mr. MURKOWSKI) proposed an amendment to the bill (S. 1801) to amend title 38, United States Code, to increase the maximum Veterans' Administration home loan guaranty, reduce Veterans' Administration—guaranteed loan defaults and foreclosures, and make other improvements in the Veterans' Administration

home loan program, and for other purposes; as follows:

On page 10, lines 24-25, strike out "No guaranteed, insured, or direct housing loan obtained by a veteran" and insert in lieu thereof "No housing loan guaranteed, insured, or made".

On page 12, lines 8-9, and on page 13, line 9, strike out "a veteran" and insert in lieu thereof "an obligor".

On page 13, lines 19-20, strike out "a veteran's" and insert in lieu thereof "an obligor's".

On page 11, lines 2, 8, 12, 13, 19, 21, and 25, on page 12, lines 7, 10, and 25, and on page 13, lines 3, 4, and 17, strike out "veteran" and insert in lieu thereof "obligor".

On page 13, line 11, strike out "veteran" the second place it appears and insert in lieu thereof "obligor".

On page 11, lines 1 and 14, and page 13, lines 5-6, strike out "veteran's" each place it appears and insert in lieu thereof "obligor's".

On page 12, lines 18-19, strike out "guaranteed, insured, or direct housing loan obtained by a veteran" and insert in lieu thereof "housing loan guaranteed, insured, or made".

On page 13, lines 10-11, strike out "guaranteed, insured, or direct housing loan obtained by the veteran" and insert in lieu thereof "housing loan guaranteed, insured, or made".

On page 14, line 15, strike out the second period.

On page 14, between lines 15 and 16, insert the following:

"(k) For the purposes of this section, the term 'obligor' means a person who (1) owns the property securing a housing loan guaranteed, insured, or made under this chapter, and (2) is either (A) the veteran who originally obtained the loan, or (B) a person who acquired the property and assumed the loan and as to whom the acceptability of the assumption of the loan was considered to be established under subsection (c) of this section in connection with such person's acquisition of the property.".

On page 21, strike out all on line 1 and insert in lieu thereof the following:

SEC. 16. VENDEE LOAN SALES.

Section 2 of Public Law 100-136 is repealed.

SEC. 17. EFFECTIVE DATES.

## TREATMENT OF CLAIMS FOR CERTAIN RETIREE BENEFITS

## METZENBAUM AMENDMENT NO. 1115

Mr. BYRD (for Mr. METZENBAUM) proposed an amendment to the bill (H.R. 2969) to amend chapter 11 of title 11 of the United States Code to improve the treatment of claims for certain retiree benefits of former employees; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—RETIREE INSURANCE

SEC. 101. (a) Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end thereof the following new section:

"§ 1114. Payment of insurance benefits to retired employees

"(a) For purposes of this section, the term 'retiree benefits' means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

"(b)(1) For purposes of this section, the term 'authorized representative' means the authorized representative designated pursuant to subsection (c) for persons receiving any retiree benefits covered by a collective bargaining agreement or subsection (d) in the case of persons receiving retiree benefits not covered by such an agreement.

"(2) Committees of retired employees appointed by the court pursuant to this section shall have the same rights, powers, and duties as committees appointed under sections 1102 and 1103 of this title for the purpose of carrying out the purposes of sections 1114 and 1129(a)(12) and, as permitted by the court, shall have the power to enforce the rights of persons under this title as they relate to retiree benefits.

"(c)(1) A labor organization shall be, for purposes of this section, the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, unless (A) such labor organization elects not to serve as the authorized representative of such persons, or (B) the court, upon a motion by any party in interest, after notice and hearing, determines that different representation of such persons is appropriate.

"(2) In cases where the labor organization referred to in subparagraph (1) elects not to serve as the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, or in cases where the court, pursuant to subparagraph (1) finds different representation of such persons appropriate, the court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, from among such persons, to serve as the authorized representative of such persons under this section.

"(d) The court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, to serve as the authorized representative, under this section, of those persons receiving any retiree benefits not covered by a collective bargaining agreement.

"(e)(1) Notwithstanding any other provision of this title, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section 'trustee' shall include a debtor in possession), shall timely pay and shall not modify any retiree benefits, except that—

"(A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or

"(B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,

after which such benefits as modified shall continue to be paid by the trustee.

"(2) Any payment for retiree benefits required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.

"(f)(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—

"(A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

"(B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.

"(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.

"(g) The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that—

"(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);

"(2) the authorized representative of the retirees has refused to accept such proposal without good cause; and

"(3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities,

except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f): *Provided, however,* That at any time after an order is entered providing for modification in the payment of retiree benefits, or at any time after an agreement modifying such benefits is made between the trustee and the authorized representative of the recipients of such benefits, the authorized representative may apply to the court for an order increasing those benefits which order shall be granted if the increase in retiree benefits sought is consistent with the standard set forth in paragraph (3); and: *Provided further,* That neither the trustee nor the authorized representative is precluded from making more than one motion for a modification order governed by this subsection.

"(h)(1) Prior to a court issuing a final order under subsection (g) of this section, if essential to the continuation of the debtor's business, or in order to avoid irreparable

damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim modifications in retiree benefits.

"(2) Any hearing under this subsection shall be scheduled in accordance with the needs of the trustee.

"(3) The implementation of such interim changes does not render the motion for modification moot.

"(i) No retiree benefits paid between the filing of the petition and the time of a plan confirmed under section 1129 of this title becomes effective shall be deducted or offset from the amounts allowed as claims for any benefits which remain unpaid, or from the amounts to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future unpaid benefits or from any benefits not paid as a result of modifications allowed pursuant to this section.

"(j) No claim for retiree benefits shall be limited by section 502(b)(7) of this title.

"(k)(1) Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.

"(2) The court shall rule on such application for modification within 90 days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the authorized representative may agree to. If the court does not rule on such application within 90 days after the date of the commencement of the hearing, or within such additional time as the trustee and the authorized representative may agree to, the trustee may implement the proposed modifications pending the ruling of the court on such application.

"(3) The court may enter such protective orders, consistent with the need of the authorized representative of the retirees to evaluate the trustee's proposal and the application for modification, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

"(l) This section shall not apply to any retiree, or the spouse or dependents of such retiree, if such retiree's gross income for the 12 months preceding the filing of the bankruptcy petition equals or exceeds $250,000, unless such retiree can demonstrate to the satisfaction of the court that he is unable to obtain health, medical, life, and disability coverage for himself, his spouse, and his dependents who would otherwise be covered by the employer's insurance plan, comparable to the coverage provided by the employer on the day before the filing of a petition under this title.".

(b) Section 1129 of title 11, United States Code, is amended by adding at the end of subsection (a) thereof the following:

"(12) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.".

(c) The table of sections for subchapter I of chapter 11, title 11, United States Code, is amended by adding at the end thereof the following new item:

"1114. Payment of insurance benefits to retired employees.".

(d) This title and the amendments made by this title shall become effective on the date of enactment of this Act and shall be effective with respect to cases commenced under chapter 11 of title 11, United States Code, in which a plan for reorganization was not confirmed by the court as of June 23, 1987, and in which any retiree benefits, as defined in section 1114 of title 11, United States Code, was still being paid on October 2, 1986 or thereafter, and in cases that become subject to chapter 11, title 11, United States Code, after October 2, 1986.

TITLE II—EXPANDED APPLICATION OF CERTAIN BANKRUPTCY AMENDMENTS RELATING TO FAMILY FARMERS

SEC. 201. (a) Section 302(c) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554) is amended—

(1) by repealing paragraph (1), and

(2) by redesignating paragraphs (2), and (3) as paragraphs (1) and (2), respectively.

(b) The amendments made by subtitle B of title II of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554) shall apply to—

(1) cases that are pending under title 11 of the United States Code, or

(2) cases under title 11 of the United States Code that are reviewable on appeal,

after the date of the enactment of this Act, without regard to whether such cases were commenced before November 26, 1986.

TITLE III—NONDISCHARGEABILITY OF CERTAIN DEBTS FOR RESTITUTION

SEC. 301. Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking out "or" at the end thereof;

(2) by redesignating paragraph (10) as paragraph (11); and

(3) by inserting after such paragraph (9) the following:

"(10) to the extent that such debt arises from a violation by the debtor of a civil or criminal law enforceable by an action by a government unit to recover restitution, damages, civil penalties, attorney fees, costs or any other relief, or to the extent that such debt arises from an agreed judgment or other agreement by the debtor to pay money or transfer property in settlement of such an action by a governmental unit; or".

SEC. 302. Section 1328(a)(2) of title 11, United States Code, is amended by striking out "section 523(a)(5)" and inserting in lieu thereof "paragraphs (5) and (10) of section 523(a)".

SEC. 303. The amendments made by this title shall apply to cases that become subject to title 11, United States Code, after June 23, 1987.

TITLE IV—STUDENT LOANS

SEC. 401. This title may be cited as the "Student Loan Bankruptcy Prevention Act".

SEC. 402. (a) Section 1328(a)(2) of title 11, United States Code, is amended by striking out "section 523(a)(5)" and inserting in lieu thereof "paragraph (5) or (8) of section 523(a)".

(b) The amendment made by subsection (a) shall not apply to any case under title 11, United States Code, commenced before the date of the enactment of this title.

TITLE V—ADDITIONAL BANKRUPTCY JUDGES

SEC. 501. (a) There shall be appointed, pursuant to section 152(a)(1) of title 28, United States Code, an additional bankruptcy judge for the judicial district of Arizona.

(b) To reflect the change made by this section, section 152(a)(2) of title 28, United States Code, is amended by striking out the following:

"Arizona ..... 4";

and inserting in lieu thereof the following:

"Arizona ..... 5".

SEC. 502. (a) There shall be appointed, pursuant to section 152(a)(1) of title 28, United States Code, an additional bankruptcy judge for the judicial district of Colorado.

(b) To reflect the change made by this section, section 152(a)(2) of title 28, United States Code, is amended by striking out the following:

"Colorado ..... 4";

and inserting in lieu thereof the following:

"Colorado ..... 5".

TITLE VI—EXTENSION OF EFFECTIVE DATE

SEC. 601. This title may be cited as the "Retiree Insurance Benefit Claims Protection Act".

SEC. 602. Section 608(a) of Public Law 99-591 (100 Stat. 3341-74), section 2(a) of Public Law 99-656 (100 Stat. 3668), Public Law 100-41, and Public Law 100-99 are each amended by striking out "September 15, 1987" or "October 15, 1987", as the case may be, and inserting in lieu thereof "the earlier of the date of the enactment of the Retiree Insurance Benefit Claims Protection Act or December 31, 1987".

SEC. 603. Section 608(a) of Public Law 99-591 (100 Stat. 3341-74), section 2(a) of Public Law 99-656 (100 Stat. 3668), Public Law 100-41, and Public Law 100-99 shall be applied as if the amendments made by section 1602 had taken effect on October 15, 1987.

## SECURITIES AND EXCHANGE COMMISSION AUTHORIZATION ACT

### RIEGLE AMENDMENT NO. 1116

Mr. BYRD (for Mr. RIEGLE) proposed an amendment to the amendment of the House—in the nature of a substitute—to the bill (S. 1452) to amend the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisors Act

of 1940 to make certain technical, clarifying, and conforming amendments, to authorize appropriations to the Securities and Exchange Commission, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert the following:

SECTION 1. This Act may be cited as the "Securities and Exchange Commission Authorization Act of 1987".

TITLE I—AUTHORIZATION

SEC. 101. Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 35. (a) There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

"(1) $158,600,000 for fiscal year 1988; and

"(2) $172,200,000 for fiscal year 1989.

"(b) Of the amounts authorized by subsection (a), the amount which may, subject to section 35A, be obligated or expended by the Commission for the purpose of funding a contract for the establishment and operation of the electronic data gathering, analysis, and retrieval ('EDGAR') system shall not exceed—

"(1) $15,000,000 for fiscal year 1988; and

"(2) $20,000,000 for fiscal year 1989.".

SEC. 102. The Securities Exchange Act of 1934 is amended by inserting after section 35 the following new section:

"REQUIREMENTS FOR THE EDGAR SYSTEM

"SEC. 35A. (a)(1) Of the funds appropriated to the Commission pursuant to section 35 of this title for fiscal year 1988 which are available pursuant to section 35(b) for establishment or operation of the electronic data gathering, analysis, and retrieval ('EDGAR') system, the Commission may not obligate or expend more than $5,000,000 for the establishment or operation of the EDGAR system unless the Commission has made the certification required by subsection (c) of this section.

"(2) Notwithstanding section 35(b), no funds appropriated for fiscal year 1989 may be obligated or expended for the establishment or operation of the EDGAR system, unless the Commission has—

"(A) filed each report required during fiscal year 1988 by subsection (b) of this section; and

"(B) made the certification required by subsection (c) of this section.

"(3) Amounts which are available to the Commission under section 35(b) for the EDGAR contract shall be the exclusive source of funds for the procurement and operation of the systems created under that contract by or on behalf of the Securities and Exchange Commission—

"(A) for the receipt of filings under Federal securities laws, and

"(B) for the automated acceptance and review of the filings and information derived from such filings.

"(b) The Commission shall submit a report to the Committees on Banking, Housing, and Urban Affairs and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Operations of the House of Representatives on the status of EDGAR development, implementation, and progress at six-month intervals beginning December 31, 1987, and ending at the close of 1990 (unless otherwise extended by the Congress). Such report shall include the following:

"(1) The overall progress and status of the project, including achievement of significant milestones and current project schedule.

"(2) The results of Commission efforts to test new or revised technical solutions for key EDGAR functions. In particular, the following functions shall be addressed and the indicated information provided:

"(A) Automating receipt and acceptance processing, including—

"(i) development and testing progress and results;

"(ii) actual versus estimated development cost; and

"(iii) actual effect of this function on Commission staff needs to assist filers.

"(B) Data tagging (identifying financial data for analysis by EDGAR), including—

"(i) description of the approach selected, identifying the types of financial data to be tagged and the calculations to be performed;

"(ii) comments by the filer population on the approach selected;

"(iii) the results of testing this approach, including information on the number of filers taking part in the test and their representativeness of the overall filer population;

"(iv) actual versus estimated development cost; and

"(v) effect of implementing this function on EDGAR benefits.

"(C) Searching text for keywords, including—

"(i) the technical approach adopted for this function;

"(ii) development and testing progress and results;

"(iii) data storage requirements and search response times as compared to EDGAR pilot system experience;

"(iv) actual versus estimated development cost; and

"(v) effect of implementing this function on EDGAR benefits.

"(3) An update of cost information for the receipt, acceptance and review, and dissemination portions of the system including a comparison of actual costs with original estimated costs and revised estimates of total system cost and total funding needs for the contract.

"(4) The status of Commission efforts to obtain and maintain staff with the proper contractual, managerial, and technical expertise to oversee the EDGAR project.

"(5) The fees, revenues, costs, and profits obtained or incurred by the contractor as a result of the required dissemination of information from the system to the public under the EDGAR contract, except that the information required under this paragraph (A) need be obtained from the contractor no more frequently than once each year, and (B) may be submitted to the Congress as a separate confidential document.

"(6) Such other information or recommendations as the Commission considers appropriate.

"(c) On or before the date the Commission enters into the contract for the EDGAR system, the Commission shall submit to the Committees on Banking, Housing, and Urban Affairs and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Operations of the House of Representatives a certification by the Commission—

"(1) of the total contract costs to the Federal Government of the EDGAR system for each of the 3 succeeding fiscal years;

"(2) that the Commission has analyzed the quantitative and qualitative benefits to be obtained by the establishment and operation of the system and has determined that such benefits justify the costs certified pursuant to paragraph (1);

"(3) that (A) the contract requires the contractor to establish a schedule for the implementation of the system; (B) the Commission has reviewed and approved that schedule; and (C) the contract contains adequate assurances of contractor compliance with that schedule;

"(4) of the capabilities which the system is intended to provide and of the competence of the contractor and of Commission personnel to implement those capabilities; and

"(5) that mandatory filings from a significant test group of registrants will be received and reviewed by the Commission for a period of at least six months before the adoption of any rule requiring mandatory filing by all registrants.

"(d) The Commission, by rule or regulation—

"(1) shall provide that any information in the EDGAR system that is required to be disseminated by the contractor—

"(A) may be sold or disseminated by the contractor only pursuant to a uniform schedule of fees prescribed by the Commission;

"(B) may be obtained by a purchaser by direct interconnection with the EDGAR system;

"(C) shall be equally available on equal terms to all persons; and

"(D) may be used, resold, or redisseminated by any person who has lawfully obtained such information without restriction and without payment of additional fees or royalties; and

"(2) shall require that persons, or classes of persons, required to make filings with the Commission submit such filings in a form and manner suitable for entry into the EDGAR system and shall specify the date that such requirement is effective with respect to that person or class; except that the Commission may exempt persons or classes of persons, or filings or classes of filings, from such rules or regulations in order to prevent hardships or to avoid imposing unreasonable burdens or as otherwise may be necessary or appropriate; and

"(3) shall require all persons who make any filing with the Commission, in addition to complying with such other rules concerning the form and manner of filing as the Commission may prescribe, to submit such filings in written or printed form—

"(A) for a period of at least one year after the effective date specified for such person or class under paragraph (2); or

"(B) for a shorter period if the Commission determines that the EDGAR system (i) is reliable, (ii) provides a suitable alternative to such written and printed filings, and (iii) assures that the provision of information through the EDGAR system is as effective and efficient for filers, users, and disseminators as provision of such information in written or printed form.

"(e) For the purposes of carrying out its responsibilities under subsection (d)(3) of this section, the Commission shall consult with representatives of persons filing, disseminating, and using information contained in filings with the Commission.".

TITLE II—AMENDMENTS TO THE SECURITIES ACT OF 1933

SEC. 201. Section 2(5) of the Securities Act of 1933 (15 U.S.C. 77b(5)) is amended by striking out "Federal Trade Commission"

and inserting in lieu thereof "Securities and Exchange Commission".

SEC. 202. Section 2(6) of the Securities Act of 1933 (15 U.S.C. 77b(6)) is amended by striking out "Canal Zone,".

SEC. 203. Section 3(a)(1) of the Securities Act of 1933 (15 U.S.C. 77c(a)(1)) is amended by striking all that appears therein and inserting in lieu thereof "(1) Reserved."

SEC. 204. Section 3(a)(5)(A) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)(A)) is amended by striking out ", except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security".

SEC. 205. Section 6(e) of the Securities Act of 1933 (15 U.S.C. 77f(e)) is repealed.

SEC. 206. Section 9(a) of the Securities Act of 1933 (15 U.S.C. 77i(a)) is amended—

(1) by striking out "Circuit Court of Appeals" and inserting in lieu thereof "court of appeals";

(2) by striking out "Court of Appeals of the District of Columbia, by filing in such court" and inserting in lieu thereof "United States Court of Appeals for the District of Columbia, by filing in such Court"; and

(3) by striking out "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)" and inserting in lieu thereof "section 1254 of title 28, United States Code".

SEC. 207. Section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any other provision of law, neither the Commission nor any other person shall be required to establish any procedures not specifically required by the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, or by chapter 5 of title 5, United States Code, in connection with cooperation, coordination, or consultation with—

"(A) any association referred to in paragraph (1) or (3) or any conference or meeting referred to in paragraph (4), while such association, conference, or meeting is carrying out activities in furtherance of the provisions of this subsection; or

"(B) any forum, agency, or organization, or group referred to in section 503 of the Small Business Investment Incentive Act of 1980, while such forum, agency, organization, or group is carrying out activities in furtherance of the provisions of such section 503.

As used in this paragraph, the terms 'association', 'conference', 'meeting', 'forum', 'agency', 'organization', and 'group' include any committee, subgroup, or representative of such entities.".

SEC. 208. (a) Section 20(b) of the Securities Act of 1933 (15 U.S.C. 77t(b)) is amended by striking out the first sentence and inserting in lieu thereof the following: "Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.".

(b) Section 20(c) of such Act (15 U.S.C. 77t(c)) is amended to read as follows:

"(c) Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof.".

SEC. 209. Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended—

(1) by striking out "United States, the" in the first sentence and inserting in lieu thereof "United States and";

(2) by striking out ", and the United States District Court for the District of Columbia"; and

(3) by striking out "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)" and inserting in lieu thereof "sections 1254, 1291, 1292, and 1294 of title 28, United States Code,".

## TITLE III—AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934

SEC. 301. Section 3(a)(6)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)(C)) is amended by striking out "under section 11(k) of the Federal Reserve Act, as amended" and inserting in lieu thereof "under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a)".

SEC. 302. Section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(16)) is amended by striking out "the Canal Zone,".

SEC. 303. Section 3(a)(22)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(22)(B)) is amended—

(1) by striking out "association or any" and inserting in lieu thereof "association, or any"; and

(2) by striking out "own behalf in" and inserting in lieu thereof "own behalf, in".

SEC. 304. Section 3(a)(34)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(C)) is amended by striking out "state" each place it appears and inserting in lieu thereof "State".

SEC. 305. Section 3(a)(39)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(B)) is amended—

(1) by striking out "months, revoking" and inserting in lieu thereof "months, or revoking"; and

(2) by striking out "barring his" and inserting in lieu thereof "barring or suspending for a period not exceeding 12 months his".

SEC. 306. Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by inserting after paragraph (46) the following:

"(47) The term 'securities laws' means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).''; and

(2) by adding at the end thereof the following:

"(49) The term 'person associated with a transfer agent' and 'associated person of a transfer agent' mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, supervision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.".

SEC. 307. Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash.".

SEC. 308. (a) The Securities Exchange Act of 1934 is amended by inserting after section 4 (15 U.S.C. 78d) the following new sections:

"DELEGATION OF FUNCTIONS BY COMMISSION

"SEC. 4A. (a) In addition to its existing authority, the Securities and Exchange Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. Nothing in this section shall be deemed to supersede the provisions of section 556(b) of title 5, or to authorize the delegation of the function of rulemaking as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule pursuant to section 19(c) of this title.

"(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, administrative law judge, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission by rule shall prescribe. The vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review. A person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 8(a) or section 8(c) of the Securities Act of 1933 or the first sentence of section 12(d) of this title; (2) suspends trading in a security pursuant to section 12(k) of this title; or (3) is pursuant to any provision of this title in a case of adjudication, as defined in section 551 of title 5, United States Code, not required by this title to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a)(1) through (6) of such title 5).

"(c) If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, indi-

vidual Commissioner, administrative law judge, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

"TRANSFER OF FUNCTIONS WITH RESPECT TO ASSIGNMENT OF PERSONNEL TO CHAIRMAN

"SEC. 4B. In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to the Commission personnel, including Commissioners, pursuant to section 4A of this title.".

(b) The Act of August 20, 1962 (Public Law 87-592; 76 Stat. 394) is hereby repealed.

SEC. 309. The first sentence of section 6(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(c)(2)) is amended by striking out "protection shall" and inserting in lieu thereof "protection of investors shall".

SEC. 310. Section 6(c)(3)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(c)(3)(A)) is amended by striking out "association" and inserting in lieu thereof "associated".

SEC. 311. Section 6(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(c)(4)) is amended by striking out "may (A) limit" and inserting in lieu thereof "may limit (A)".

SEC. 312. Section 6(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(e)) is amended—

(1) by striking out "paragraph (4) of this section" in paragraph (1) and inserting in lieu thereof "paragraph (3) of this subsection";

(2) by striking out paragraph (3) thereof and by redesignating paragraph (4) as paragraph (3); and

(3) in paragraph (3)(E) (as so redesignated)—

(A) by striking out "fixes" and inserting in lieu thereof "fixing";

(B) by striking out "paragraph (4)(A)" and inserting in lieu thereof "subparagraph (A) of this paragraph"; and

(C) by striking out "paragraph (4)(B)" and inserting in lieu thereof "subparagraph (B) of this paragraph".

SEC. 313. Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1) is amended—

(1) by striking out "transaction" in paragraph (2) of subsection (b) and inserting in lieu thereof "transactions"; and

(2) by striking out everything after the first sentence in paragraph (4) of subsection (c).

SEC. 314. Sections 11A(e) and 12(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(e) and 78*l*(m)) are repealed.

SEC. 315. Section 13(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(c)) is amended by striking out "thereof of" and inserting in lieu thereof "thereof".

SEC. 316. Section 13(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(h)) is repealed.

SEC. 317. Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(b)) is amended—

(1) by striking out "fiduciary, or any" in clause (ii) of subparagraph (B) of paragraph (4) and inserting in lieu thereof "fiduciary, transfer agent, or";

(2) by striking out subparagraph (C) of paragraph (4) and inserting in lieu thereof the following:

"(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.";

(3) by striking out "or seeking to become associated," in the first sentence of paragraph (6) and inserting in lieu thereof "seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated"; and

(4) by striking out "17A(b)(4)(B)" in paragraph (10) and inserting in lieu thereof "17A(b)(4)(A)".

SEC. 318. Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4(b)(2)(C)) is amended—

(1) by striking out "security" and inserting in lieu thereof "securities";

(2) by striking out "or the securities"; and

(3) by striking out "burden or competition" and inserting in lieu thereof "burden on competition".

SEC. 319. Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4(c)(4)) is amended by striking out the first sentence and inserting in lieu thereof the following: "The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal securities dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted by any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).".

SEC. 320. Section 15B(c)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*-4(c)(6)(A)) is amended by striking out "board" and inserting in lieu thereof "Board".

SEC. 321. Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking out subsection (c)(2) and inserting in lieu thereof the following:

"(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against any clearing agency, transfer agent, municipal securities dealer, or person associated with a transfer agent or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency, if any, notice of the commencement of any proceeding and a copy of any order entered by the Commission against the clearing agency, transfer agent, or municipal securities dealer, or against any person associated with a transfer agent or municipal securities dealer for which the agency is the appropriate regulatory agency.";

(2) by adding at the end of subsection (f)(2) the following: "Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information."; and

(3) by striking out "paragraphs (1) and (2)" in subsection (f)(3)(A) and inserting in lieu thereof "paragraph (1)".

SEC. 322. Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended—

(1) by inserting after "concerning such transfer agent" in subsection (c)(2) "and any persons associated with the transfer agent";

(2) by striking out "thirty" in subsection (c)(2) and inserting in lieu thereof "45";

(3) by redesignating subparagraphs (B) and (C) of subsection (c)(3) as subparagraphs (A) and (B), respectively, of new subsection (c)(4);

(4) by striking out subsection (c)(3)(A) and inserting in lieu thereof:

"(3) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent, whether prior or subsequent to becoming such, or any person associated with such transfer agent, whether prior or subsequent to becoming so associated—

"(A) has committed or omitted any act enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); or

"(B) is subject to an order entered pursuant to subparagraph (C) of paragraph (4) of this subsection barring or suspending the right of such person to be associated with a transfer agent.";

(5) by inserting after subsection (c)(4)(B) (as redesignated) the following new subparagraph:

"(C) The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding twelve months or bar any such person from being associated with the transfer agent, if the appropriate regulatory agency finds, on the

record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act enumerated in subparagraph (A), (D), or (E) or paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.";

(6) by striking out "clearing agency or transfer agent" in subsection (d)(3)(B) and inserting in lieu thereof "clearing agency, transfer agent, or person associated with a transfer agent"; and

(7) by striking out "or transfer agent" in subsection (d)(4), and inserting in lieu thereof ", transfer agent, or person associated with a transfer agent,".

SEC. 323. Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(1) by striking out "Wherever" in subsection (d) and inserting in lieu thereof "Whenever";

(2) by striking out ", the United States District Court for the District of Columbia," in subsection (e); and

(3) by striking out the second sentence of subsection (g).

SEC. 324. Section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)) is amended—

(1) by inserting "or" before "any self-regulatory organization" in the last sentence of paragraph (1); and

(2) by inserting "shall" after "section 19(b) of this title," in paragraph (3).

SEC. 325. Section 23(b)(4)(F) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(b)(4)(F)) is amended by striking out "The" and inserting in lieu thereof "the".

SEC. 326. Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(1) by striking out ", the United States District Court for the District of Columbia,"; and

(2) by striking out "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)" and inserting in lieu thereof "sections 1254, 1291, 1292, and 1294 of title 28, United States Code".

SEC. 327. Section 28(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(c)) is amended by striking out "self-regulatory organization or a member thereof" and inserting in lieu thereof "self-regulatory organization on a member thereof".

SEC. 328. Section 28(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(d)) is amended by striking out "change is beneficial" and inserting in lieu thereof "change in beneficial".

SEC. 329. Section 28(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(1)) is amended by striking out "Amendments in 1975" and inserting in lieu thereof "Amendments of 1975".

SEC. 330. Section 211 of the Securities Exchange Act of 1934 (15 U.S.C. 78jj) is hereby repealed.

## TITLE IV—AMENDMENTS TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

SEC. 401. Section 8 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79h) is amended by striking out "otherwise, —" and inserting in lieu thereof "otherwise —".

SEC. 402. Section 18 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 78r) is amended—

(1) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively; and

(2) in subsections (e) and (f) (as so redesignated), by striking out ", the district court of the United States for the District of Columbia,".

SEC. 403. Section 24 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 78x) is amended by striking out "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)" and inserting in lieu thereof "section 1254 of title 28, United States Code".

SEC. 404. Section 25 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79y) is amended—

(1) by striking out ", the district court of the United States for the District of Columbia,"; and

(2) by striking out "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347), and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia', approved February 9, 1893 (D.C. Code, title 18, sec. 26)" and inserting in lieu thereof "sections 1254, 1291, 1292, and 1294 of title 28, United States Code".

SEC. 405. Section 30 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-4) is amended by striking out the last sentence thereof.

## TITLE V—AMENDMENTS TO THE TRUST INDENTURE ACT OF 1939

SEC. 501. Section 303(4) of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc(4)) is amended by striking out "undertaking" and inserting in lieu thereof "undertaking".

SEC. 502. Section 303(12) of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc(12)) is amended by inserting "(including a guarantor)" after "person" each place it appears.

## TITLE VI—AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

SEC. 601. Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)) is amended by inserting "completed" before "fiscal years" each place it appears.

SEC. 602. Section 2(a)(39) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(39)) is amended by striking out "the Canal Zone,".

SEC. 603. Section 2(a)(48)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by striking out "sections 55(a)(1) through (3)"and inserting in lieu thereof "paragraphs (1) through (3) of section 55(a)".

SEC. 604. Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended—

(1) by inserting "or" after "therefore;"; and

(2) by inserting a period after "guardian" and striking out all that follows through "principal to another or others.".

SEC. 605. Section 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(7)) is amended to read as follows:

"(7) Reserved.".

SEC. 606. Section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(11)) is amended—

(1) by striking out "Code of 1954" each place it appears and inserting in lieu thereof "Code of 1986";

(2) by striking out "or which holds only assets of governmental plans" and inserting in lieu thereof "; or any governmental plan"; and

(3) by striking out "trusts;" and inserting in lieu thereof "trusts or governmental plans, or both;".

SEC. 607. Section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)) is amended by striking out "Close-end" and inserting in lieu thereof "Closed-end".

SEC. 608. Section 6(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)) is amended—

(1) by striking out "the Canal Zone," in paragraph (1); and

(2) by striking out paragraph (2) and redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

SEC. 609. Section 9 of the Investment Company Act of 1940 (15 U.S.C. 80a-9) is amended by striking out paragraphs (1) and (2) in subsection (a) and inserting in lieu thereof the following:

"(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or".

SEC. 610. Section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a-12) is amended—

(1) by striking out "Treasury" in subsection (d)(1)(A)(iii) and inserting in lieu thereof "treasury";

(2) by striking out "it reasonably possible" in subsection (d)(1)(G) and inserting in lieu thereof "is reasonably possible"; and

(3) by striking out "only thereof" in subsection (f) and inserting in lieu thereof "thereof only".

SEC. 611. Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a-15) is amended—

(1) by striking out "(40)" in subsection (d) and inserting in lieu thereof "(42)"; and

(2) by striking out the period at the end of subsection (B) of paragraph (3) of subsection (f) and inserting in lieu thereof a comma.

SEC. 612. Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17) is amended by striking out the second sentence of each of subsections (h) and (i).

SEC. 613. Section 18(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-18(e)) is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

SEC. 614. Section 20 of the Investment Company Act of 1940 (15 U.S.C. 80a-20) is amended—

(1) by striking out the second sentence of subsection (b);

(2) by striking out the first sentence of subsection (d); and

(3) by striking out "at any time after the effective date of this title" in subsection (d).

SEC. 615. Section 21(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-21(b)) is amended by striking out "to the extension or renewal of any such loan made prior to March 15, 1940, or".

SEC. 616. Section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a-22) is amended—

(1) by striking out "subsection (b)(8)" in paragraph (1) of subsection (b) and inserting in lieu thereof "subsection (b)(6)";

(2) by striking out paragraph (2) of subsection (b) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(3) by striking out "section 15A(k)(2)" in subsection (b)(2) (as so redesignated) and inserting in lieu thereof "section 19(c)";

(4) by inserting in the first sentence of subsection (e) a comma after the word "redemption" where it first appears and where it appears for the third time; and

(5) by striking out the last sentence of subsection (e).

SEC. 617. Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(d)) is amended by inserting a period immediately after "issuer" in the second sentence thereof and by striking out all that follows in such sentence.

SEC. 618. Section 26(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(b)) is amended by striking out "intend" and inserting in lieu thereof "intended".

SEC. 619. Section 26(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(c)) is amended by striking out "contract of agreement" and inserting in lieu thereof "contract or agreement".

SEC. 620. Section 28(a)(2)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-28(a)(2)(B)) is amended by striking out "subsection" and inserting in lieu thereof "paragraph".

SEC. 621. Section 28(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-28(d)(2)) is amended by inserting "of" immediately before "subsection (a)".

SEC. 622. Section 36 of the Investment Company Act of 1940 (15 U.S.C. 80a-35) is amended—

(1) by striking out "loans" in paragraph (4) of subsection (b) and inserting in lieu thereof "loads";

(2) by redesignating subsection (d) as subsection (c); and

(3) in subsection (c) (as so redesignated), by striking out "through (c)" and inserting in lieu thereof "and (b)".

SEC. 623. Section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a-41) is amended by redesignating subsection (e) as subsection (d).

SEC. 624. Section 53 of the Investment Company Act of 1940 (15 U.S.C. 80a-52) is amended by inserting a period in the first sentence thereof immediately after "1941" and by striking out everything that follows in such sentence.

SEC. 625. Section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-53(a)) is amended by striking out "defined in sections" and inserting in lieu thereof "defined in section".

SEC. 626. Section 55(a)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-54(a)(1)(B)) is amended by striking out "described in sections" and inserting in lieu thereof "described in section".

SEC. 627. Section 57(i) of the Investment Company Act of 1940 (15 U.S.C. 80a-56(i)) is amended by striking out "sections 17 (a) and (d)" each place it appears and inserting in lieu thereof "subsections (a) and (d) of section 17".

## TITLE VII—AMENDMENTS TO THE INVESTMENT ADVISERS ACT OF 1940

SEC. 701. Section 202(a)(19) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(19)) is amended by striking out "the Canal Zone,".

SEC. 702. Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended—

(1) by inserting "transfer agent," after "fiduciary," in subsection (e)(2)(B);

(2) by inserting "transfer agent," after "government securities dealer," in subsection (e)(3);

(3) by striking out "or seeking to become associated" in the first sentence of subsection (f) and inserting in lieu thereof ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated"; and

(4) by striking out "subsection (d)" in subsection (g) and inserting in lieu thereof "subsection (c) or subsection (e)".

SEC. 703. Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended to read as follows:

"INVESTMENT ADVISORY CONTRACTS

"SEC. 205. (a) No investment adviser, unless exempt from registration pursuant to section 203(b), shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to enter into, extend, or renew any investment advisory contract, or in any way to perform any investment advisory contract entered into, extended, or renewed on or after the effective date of this title, if such contract—

"(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

"(2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

"(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

"(b) Paragraph (1) of subsection (a) shall not—

"(1) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date;

"(2) apply to an investment advisory contract with—

"(A) an investment company registered under title I of this Act, or

"(B) any other person (except a trust, governmental plan, collective trust fund, or separate account referred to in section 3(c)(11) of title I of this Act), provided that the contract relates to the investment of assets in excess of $1 million,

if the contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify; or

"(3) apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in this title, if (A) the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 61(a)(3)(B)(iii) of title I of this Act is satisfied, and (B) the business development company does not have outstanding any option, warrant, or right issued pursuant to section 61(a)(3)(B) of title I of this Act and does not have a profit-sharing plan described in section 57(n) of title I of this Act.

"(c) For purposes of paragraph (2) of subsection (b), the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the Commission by order shall determine otherwise.

"(d) As used in paragraphs (2) and (3) of subsection (a), 'investment advisory contract' means any contract or agreement whereby a person agrees to act as investment adviser to or to manage any investment or trading account of another person other than an investment company registered under title I of this Act.".

SEC. 704. Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9) is amended by redesignating subsection (e) as subsection (d).

SEC. 705. Section 211(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11(b)) is amended by striking out "the Federal Register Act" and inserting in lieu thereof "chapter 15 of title 44, United States Code,".

SEC. 706. Section 213(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-13(a)) is amended by striking out "sections 239 and 240 of the Judicial Code, as amended" and inserting in lieu thereof "section 1254 of title 28, United States Code".

SEC. 707. Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-14) is amended by striking out "sections 128 and

240 of the Judicial Code, as amended, and section 7, as amended, of the Act entitled, 'An Act to establish a court of appeals for the District of Columbia', approved February 9, 1893", and inserting in lieu thereof "sections 1254, 1291, 1292, and 1294 of title 28, United States Code".

TITLE VIII—AMENDMENTS RELATING TO GOVERNMENT SECURITIES ACT OF 1986

SEC. 801. (a) Section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)(1)(B)(i)) is amended by striking out "When" and inserting "When such".

(b) Section 17(f)(1)(A) of such Act (15 U.S.C. 78q(f)(1)(A)) is amended by striking out "government securities," and inserting "securities issued pursuant to chapter 31 of title 31, United States Code,".

SEC. 802. Section 16(12) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78111(12)) is amended by inserting before the period at the end thereof the following: "other than a government securities broker or government securities dealer registered under section 15C(a)(1)(A) of the 1934 Act".

## IMPOSITION AND COLLECTION OF CRIMINAL FINES IMPROVEMENTS ACT

### BIDEN AMENDMENT NO. 1117

Mr. BYRD (for Mr. BIDEN, for himself, Mr. THURMOND, Mr. KENNEDY, and Mr. HATCH) proposed an amendment to the bill (H.R. 3483), to amend title 18, United States Code, to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Criminal Fines and Sentencing Act of 1987".

TITLE I—SENTENCING AMENDMENTS

SEC. 101. SHORT TITLE.

This title may be cited as the "Sentencing Act of 1987".

SEC. 102. PROSPECTIVE APPLICATION OF SENTENCING REFORM ACT.

(a) APPLICATION.—Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by inserting "and shall apply only to offenses committed on or after the effective date of this chapter" after "date of enactment".

(b) CONFORMING AMENDMENTS.—(1) Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "convicted of an offense or adjudicated to be a juvenile delinquent" and inserting "who committed an offense or an act of juvenile delinquency".

(2) Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended by striking out "that is within the range that applies to the prisoner under the applicable parole guideline" and inserting "pursuant to section 4206 of title 18, United States Code".

SEC. 103. STANDARD FOR DEPARTURE.

Section 3553(b) of title 18, United States Code, is amended by inserting after the first sentence the following: "In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission.".

SEC. 104. PROCEDURE FOR APPEALING SENTENCE IMPOSED BY A MAGISTRATE.

Section 3742 of title 18, United States Code, is amended by adding at the end thereof the following:

"(f) APPLICATION TO A SENTENCE BY A MAGISTRATE.—An appeal of an otherwise final sentence imposed by a United States magistrate may be taken to a judge of the district court, and the provisions of this section shall apply as though the appeal were to a court of appeals from a sentence imposed by a district court.".

SEC. 105. REVIEW OF A SENTENCE FOR WHICH THERE IS NO APPLICABLE GUIDELINE.

Section 3742 of title 18, United States Code, is further amended—

(1) in subsections (a)(4) and (b)(4) by inserting "plainly unreasonable or" before "greater than" and by striking ", if any,";

(2) in subsection (d) by—

(A) striking out "or" at the end of paragraph (2);

(B) striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(C) inserting after paragraph (3) the following new paragraph:

"(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.";

(3) in subsection (e)(2) by inserting "or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable," after "is outside the range of the applicable sentencing guideline and is unreasonable"; and

(4) in subsections (e)(2)(A) and (e)(2)(B) by inserting "and" after "it shall set aside the sentence".

SEC. 106. CLARIFICATION OF BASIS FOR AFFIRMING AN APPEAL.

Section 3742 of title 18, United States Code, is further amended by amending subsection (e)(3) to read as follows:

"(3) is not described in paragraph (1) or (2), it shall affirm the sentence.".

SEC. 107. CORRECTION OF PROBATION EXCLUSION FOR ORGANIZATIONS CONVICTED OF SERIOUS OFFENSES.

Section 3561(a)(1) of title 18, United States Code, is amended by inserting "and the defendant is an individual" after "the offense is a Class A or Class B felony".

SEC. 108. EXTENSION OF MAXIMUM TERMS OF SUPERVISED RELEASE.

Section 3583(b) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking out "three years" and inserting in lieu thereof "five years";

(2) in paragraph (2) by striking out "two years" and inserting in lieu thereof "three years"; and

(3) in paragraph (3) by inserting after "misdemeanor" the following: ", not a petty offense".

SEC. 109. INCLUSION OF PROTECTION OF PUBLIC AS FACTOR IN DECIDING WHETHER TO IMPOSE SUPERVISED RELEASE.

Section 3583(c) of title 18, United States Code, is amended by inserting "(a)(2)(C)," after "(a)(2)(B),".

SEC. 110. CLARIFICATION OF PROCEDURE FOR MODIFYING CONDITIONS OF PROBATION.

Section 3563(c) of title 18, United States Code, is amended—

(1) by striking out "revocation or modification of probation" and inserting in lieu thereof "the modification of probation and"; and

(2) by striking out the comma after "may".

SEC. 111. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF PROBATION.

Section 3564(c) of title 18, United States Code, is amended by inserting ", pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," after "may".

SEC. 112. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF SUPERVISED RELEASE.

Section 3583(e) of title 18, United States Code, is amended—

(1) in paragraph (1) by inserting "pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," after "one year of supervised release,"; and

(2) in paragraph (2) by striking out "after a hearing," and by inserting "the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and" after "pursuant to".

SEC. 113. REMEDIES FOR FAILURE TO PAY RESTITUTION.

Section 3663(g) of title 18, United States Code, is amended in each of the second and third sentences by inserting "or a term of supervised release" after "probation" and by inserting "probation or" after "conditions of".

SEC. 114. DETERMINATION OF GUIDELINE SENTENCE FOR PRISONERS TRANSFERRED PURSUANT TO TREATY FROM FOREIGN COUNTRIES.

Section 4106(b) of title 18, United States Code, is amended to read as follows:

"(b)(1) An offender transferred to the United States to serve a sentence of imprisonment that is longer than the maximum period of time specified in the applicable sentencing guidelines promulgated pursuant to section 994(a)(1) of title 28, United States Code, as determined by the United States Parole Commission upon the recommendation of the United States Probation Service, shall serve in an official detention facility the maximum period of time specified in the applicable sentencing guidelines and shall serve the remainder of the term imposed as a term of supervised release.

"(2) To the extent permitted by the applicable treaty, a final determination by the Parole Commission as to whether the transferred offender shall serve a term of supervised release and the length of such term may be appealed to the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States, and the court of appeals shall decide and dispose of the appeal in accordance with section 3742 as though the determination appealed had been imposed by the United States district court.

"(3) A determination by the Parole Commission shall be made only after affording the transferred offender an opportunity—

"(A) to submit evidence or information as to the applicable sentencing guideline; and

"(B) for an appeal within the Parole Commission of such determination by a reviewing authority established by the Director pursuant to regulations.

"(4) The responsibilities of the Parole Commission set forth in this subsection shall be transferred to another entity designated by law on the date provided for the termination of the Parole Commission in section 235(b) of the Comprehensive Crime Control Act of 1984.".

SEC. 115. PROCEDURE FOR RELIEF OF LABOR DISABILITIES FOLLOWING CONVICTION.

Section 229(a) of the Comprehensive Crime Control Act of 1984 is amended by—

(1) striking out "the Board of Parole of the United States Department of Justice" and inserting in lieu thereof "the United States Parole Commission"; and

(2) striking out "on motion of the United States Department of Justice,".

SEC. 116. PETTY OFFENSE.

(a) ELIMINATION OF REQUIREMENT FOR PETTY OFFENSE GUIDELINES.—Section 3553(b) of title 18, United States Code, is amended by adding at the end the following: "If there is no applicable sentencing guideline and the offense is classified as a petty offense, the court shall impose an appropriate sentence having due regard for the purposes of sentencing set forth in subsection (a)(2).".

(b) CONFORMING AMENDMENT.—Section 994(w) of title 28, United States Code, is amended by inserting after "each sentence imposed" the following: ", except in the case of a sentence imposed for a petty offense, as defined in title 18, United States Code, for which there is no applicable sentencing guideline,".

SEC. 117. MODIFICATION OF REQUIREMENT OF STATING REASONS FOR CHOOSING A POINT WITH THE PRESCRIBED SENTENCING RANGE.

Section 3553(c)(1) of title 18, United States Code, is amended by inserting after "in subsection (a)(4)," the following: "and the range described in subsection (a)(4) exceeds 24 months,".

SEC. 118. CLARIFICATION OF AUTHORITY OF BUREAU OF PRISONS TO ACCEPT COMMITMENTS TO ITS COMMUNITY CORRECTIONS FACILITY AS CONDITION OF PROBATION OR SUPERVISED RELEASE.

Section 3563(b)(12) of title 18, United States Code, is amended by inserting after "community corrections facility" the following: ", which facility may be one maintained or contracted by the Bureau of Prisons.".

SEC. 119. APPOINTMENT OF COUNSEL IN RELATION TO SUPERVISED RELEASE.

Section 223(e) of the Comprehensive Crime Control Act of 1984, as amended by section 103 of the Criminal Justice Act Revisions of 1986, is further amended by striking paragraph (2) and inserting in lieu thereof the following new paragraph:

(2) in paragraph (1) by striking out subparagraph (E) and inserting in lieu thereof the following new subparagraph:

"(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;".

SEC. 120. AUTHORITY OF DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS TO CONTRACT FOR PSYCHIATRIC AFTERCARE.

Section 3672 of title 18, United States Code, is amended—

(1) by amending the seventh undesignated paragraph to read as follows:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological and vocational services; corrective and preventative guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict or drug-dependent person, or a person suffering from a psychiatric disorder by eliminating his dependence on alcohol or addicting drugs, by controlling his dependence and his susceptibility to addiction, or by treating his psychiatric disorder. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).";" and

(2) by adding the following new undesignated paragraph at the end thereof:

"Whenever the court finds that funds are available for payment by or on behalf of a person furnished such services, training, or guidance, the court may direct that such funds be paid to the Director. Any moneys collected under this paragraph shall be used to reimburse the appropriations obligated and disbursed in payment for such services, training, or guidance.".

SEC. 121. EMERGENCY GUIDELINES PROMULGATION AUTHORITY.

Section 994(a) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding the following:

"(4) in the case of—

"(A) an invalidated guideline;

"(B) the creation of a new offense or amendment of an existing offense; or

"(C) any other reason relating to the application of a previously established guideline, and determined by the Commission to be urgent and compelling,

a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress pursuant to subsection (p) of this section. The authority of the Commission to promulgate and distribute guidelines pursuant to paragraph (4)(C) shall expire November 1, 1989.".

SEC. 122. APPLICATION OF RULE 35(b) TO CONDUCT OCCURRING BEFORE EFFECTIVE DATE OF SENTENCING GUIDELINES.

The amendment to rule 35(b) of the Federal Rules of Criminal Procedure made by the order of the Supreme Court on April 29, 1985, shall apply with respect to all crimes committed before the taking effect of section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 123. SENTENCING COMMISSION STAFF DIRECTOR SALARY.

Section 995(a)(2) of title 28, United States Code, is amended to read as follows:

"(2) appoint and fix the salary and duties of the staff director of the Sentencing Commission, who shall serve at the discretion of the Commission and who may be compensated at a rate not to exceed the highest rate now or hereafter prescribed for the director of the Federal Judicial Center;".

SEC. 124. AUTHORITY TO LOWER A SENTENCE BELOW A STATUTORY MINIMUM FOR OLD OFFENSES.

Notwithstanding section 235 of the comprehensive Crime Control Act of 1984—

(1) section 3553(e) of title 18, United States Code;

(2) rule 35(b) of the Federal Rules of Criminal Procedure as amended by section 215(b) of such Act; and

(3) rule 35(b) as in effect before the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code,

shall apply in the case of an offense committed before the taking effect of such guidelines.

SEC. 125. LIMITATION ON TERM TO BE SERVED FOR VIOLATION OF CONDITIONS OF SUPERVISED RELEASE.

Section 3583(e)(4) of title 18, United States Code, is amended by adding after "postrelease supervision" the following: "(but) in the case of a person who has already served in prison the maximum term authorized by the statute under which the person was convicted, including credit for good time, not more than three years in the case of a class B felony, or not more than 2 years in the case of a class C or D felony)"

SEC. 126. GENERAL EFFECTIVE DATE.

This title shall take effect upon the date of enactment of this title, or the date of the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code, whichever date occurs later.

## TITLE II—CRIMINAL FINE IMPROVEMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Criminal Fine Improvements Act of 1987".

SEC. 202. DUTIES OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS IN RELATION TO FINES.

Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating paragraph (17) as paragraph (18); and

(2) by inserting after paragraph (16) the following new paragraph:

"(17) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;".

SEC. 203. SPECIAL ASSESSMENTS.

Section 3013 of title 18, United States Code, is amended by adding at the end the following:

"(c) The obligation to pay an assessment ceases five years after the date of the judgment.

"(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.".

SEC. 204. DEFINITION OF PETTY OFFENSE.

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 19. Petty offense defined

"As used in this title, the term 'petty offense' means a Class B misdemeanor, a Class C misdemeanor, or an infraction.".

(b) TECHNICAL AMENDMENT.—The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end the following new item:

"19. Petty offense defined.".

(c) CLARIFYING AMENDMENT TO EARLIER TECHNICAL PROVISION.—Section 38(a) of the Criminal Law and Procedure Technical Amendments Act of 1986 is amended by striking out "section 23" and inserting in lieu thereof "section 34(a)".

SEC. 205. ELIMINATION OF OBSOLETE PROVISION.

Subsection (b) of section 3559 of title 18, United States Code, is amended by striking out "except that:" and all that follows through the end of the subsection and inserting in lieu thereof ", except that the

maximum term of imprisonment is the term authorized by the law describing the offense.".

SEC. 206. AUTHORIZED FINES.

Section 3571 of title 18, United States Code, is amended to read as follows:

"§ 3571. Sentence of fine

"(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

"(b) FINES FOR INDIVIDUALS.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $250,000;

"(4) for a misdemeanor resulting in death, not more than $250,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $100,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or

"(7) for an infraction, not more than $5,000.

"(c) FINES FOR ORGANIZATIONS.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $500,000;

"(4) for a misdemeanor resulting in death, not more than $500,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $200,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000; and

"(7) for an infraction, not more than $10,000.

"(d) ALTERNATIVE FINE BASED ON GAIN OR LOSS.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

"(e) SPECIAL RULE FOR LOWER FINE SPECIFIED IN SUBSTANTIVE PROVISION.—If a law setting forth an offense specifies a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.".

SEC. 207. IMPOSITION OF A SENTENCE OF FINE AND RELATED MATTERS.

Section 3572 of title 18, United States Code, is amended to read as follows:

"§ 3572. Imposition of a sentence of fine and related matters

"(a) FACTORS TO BE CONSIDERED.—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

"(1) the defendant's income, earning capacity, and financial resources;

"(2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

"(3) any pecuniary loss inflicted upon others as a result of the offense;

"(4) whether restitution is ordered or made and the amount of such restitution;

"(5) the need to deprive the defendant of illegally obtained gains from the offense;

"(6) whether the defendant can pass on to consumers or other persons the expense of the fine; and

"(7) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

"(b) FINE NOT TO IMPAIR ABILITY TO MAKE RESTITUTION.—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

"(c) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

"(1) modified or remitted under section 3573;

"(2) corrected under rule 35 and section 3742; or

"(3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

"(d) TIME, METHOD OF PAYMENT, AND RELATED ITEMS.—A person sentenced to pay a fine or other monetary penalty shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the court provides for payment in installments, such installments shall be in equal monthly payments over the period provided by the court, unless the court establishes some other schedule. If the judgment permits other than immediate payment, the period provided for shall not exceed 5 years, excluding any period served by the defendant as imprisonment for the offense.

"(e) ALTERNATIVE SENTENCE PRECLUDED.—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

"(f) RESPONSIBILITY FOR PAYMENT OF MONETARY OBLIGATION RELATING TO ORGANIZATION.—If a sentence includes a fine, [special assessment, or other monetary obligation (including interest)] with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

"(g) SECURITY FOR STAYED FINE.—If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

"(1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

"(2) require the defendant to provide a bond or other security to ensure payment of the fine; or

"(3) restrain the defendant from transferring or dissipating assets.

"(h) DELINQUENCY.—A fine is delinquent if a payment is more than 30 days late.

"(i) DEFAULT.—A fine is in default if a payment is delinquent for more than 90 days. When a fine is in default, the entire amount of the fine is due within 30 days after notification of the default, notwithstanding any installment schedule.

SEC. 208. REVISION OF MODIFICATION OR REMISSION PROVISION.

(a) OFFENSE.—Section 3573 of title 18, United States Code, is amended to read as follows:

"§ 3573. Petition of the Government for Modification or Remission

"Upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective, the court may, in the interest of justice—

"(1) remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties;

"(2) defer payment of the fine or special assessment to a date certain or pursuant to an installment schedule; or

"(3) extend a date certain or an installment schedule previously ordered.

A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court.".

(b) TECHNICAL AMENDMENT.—The table of sections for subchapter C of chapter 227 of title 18, United States Code, is amended by striking out the item for section 3573 and insert in lieu thereof the following:

"3573. Petition of the Government for Modification or Remission.".

SEC. 209. RECEIPT OF FINES—INTERIM PROVISIONS.

(a) NOVEMBER 1, 1987 TO APRIL 30, 1988.—Notwithstanding section 3611 of title 18, United States Code, a person who, during the period beginning on November 1, 1987, and ending on April 30, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

(b) MAY 1, 1988, TO OCTOBER 31, 1988.—(1) Notwithstanding section 3611 of title 18, United States Code, a person who during the period beginning on May 1, 1988, and ending on October 31, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment in accordance with this subsection.

(2) In a case initiated by citation or violation notice, such person shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.".

(3) In any other case, such person shall pay the fine or assessment (including any interest or penalty) to the clerk of the

court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

SEC. 210. RECEIPT OF FINES—PERMANENT PROVISION.

(a) IN GENERAL.—Section 3611 of title 18, United States Code, is amended to read as follows:

"§ 3611. Payment of a fine

"A person who is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any fine imposed after October 31, 1988. Such amendment shall also apply with respect to any fine imposed on or before October 31, 1988, if the fine remains uncollected as of February 1, 1989, unless the Director of the Administrative Office of the United States Courts determines further delay is necessary. If the Director so determines, the amendment made by this section shall apply with respect to any such fine imposed on or before October 31, 1988, if the fine remains uncollected as of May 1, 1989.

SEC. 211. COLLECTION AMENDMENTS.

(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—Section 3612(a) of title 18, United States Code, is amended to read as follows:

"(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—The clerk or the person designated under section 604(a)(17) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

"(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

"(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the clerk or the person designated under section 604(a)(17) of title 28 shall provide notification not later than the next day that is not a Saturday, Sunday, or legal public holiday.".

(b) INFORMATION TO BE INCLUDED IN JUDGMENT.—Section 3612(b) of title 18, United States Code, is amended to read as follows:

"(b) INFORMATION TO BE INCLUDED IN JUDGMENT; JUDGMENT TO BE TRANSMITTED TO ATTORNEY GENERAL.—(1) A judgment or order imposing, modifying, or remitting a fine of more than $100 shall include—

"(A) the name, social security account number, mailing address, and residence address of the defendant;

"(B) the docket number of the case;

"(C) the original amount of the fine and the amount that is due and unpaid;

"(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

"(E) a description of any modification or remission; and

"(F) if other than immediate payment is permitted, a requirement that, until the fine is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs.

"(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.".

(c) TECHNICAL AMENDMENTS.—

(1) Section 3612(d) of title 18, United States Code, is amended by striking out "section 3572(i)" and inserting in lieu thereof "3572(h)".

(2) Section 3612(e) of title 18, United States Code, is amended by striking out "section 3572(j)" and inserting in lieu thereof "3572(i)".

(d) INTEREST ON FINES.—Section 3612(f) of title 18, United States Code, is amended to read as follows:

"(f) INTEREST ON FINES.—

"(1) IN GENERAL.—The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

"(2) COMPUTATION.—Interest on a fine shall be computed—

"(A) daily (from the first day on which the defendant is liable for interest under paragraph (1)); and

"(B) at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled before the first day on which the defendant is liable for interest under paragraph (1).

"(3) MODIFICATION OF INTEREST BY COURT.—If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may—

"(A) waive the requirement for interest;

"(B) limit the total of interest payable to a specific dollar amount; or

"(C) limit the length of the period during which interest accrues.".

(e) PENALTY FOR DELINQUENT FINE; WAIVER OF INTEREST OR FINE BY ATTORNEY GENERAL.—Section 3612 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(g) PENALTY FOR DELINQUENT FINE.—If a fine becomes delinquent, the defendant shall pay, as a penalty, an amount equal to ten percent of the principal amount that is delinquent. If a fine becomes in default, the defendant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.

"(h) WAIVER OF INTEREST OR PENALTY BY ATTORNEY GENERAL.—The Attorney General may waive all or part of any interest or penalty under this section if, as determined by the Attorney General, reasonable efforts to collect the interest or penalty are not likely to be effective.

"(i) APPLICATION OF PAYMENTS.—Payments relating to fines shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest; and (4) to penalties.".

SEC. 212. RECEIPT OF RESTITUTION PAYMENTS BY COURTS.

Section 3663(f)(4) of title 18, United States Code, is amended by inserting "or the person designated under section 604(a)(17) of title 28" after "Attorney General".

SEC. 213. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this title, except that the amendments made by section 210 of this title shall take effect as provided in such section and the amendments made by sections 204, 205, 206, 207, 208, 211, and 212 shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984.

## NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Tuesday, November 17, 1987, at 9 a.m., to conduct a business meeting. The committee will be marking up items currently pending on its legislative and administrative agenda, including the consideration of requests by Senate committees for supplemental funding.

For further information regarding this business meeting, please contact Carole Blessington of the Rules Committee staff on 224-0278.

## AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committtee on Armed Services be authorized to meet during the session of the Senate on Friday, October 30, 1987, in open session to receive testimony on defense nuclear safety matters in review of S. 1085, a bill to create an independent oversight board to ensure the safety of U.S. Government nuclear facilities, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AGRICULTURAL CREDIT

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Agricultural Credit of the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Friday, October 30, 1987, to mark up farm credit legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HEALTH

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Health of the Committee on Finance be authorized to meet during the session of the Senate on October 30, 1987, to hold a hearing to examine the current nursing shortage crisis which is adversely affecting the health care of all Americans.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, TRADE, OCEANS AND ENVIRONMENT

SUBCOMMITTEE ON TERRORISM, NARCOTICS AND INTERNATIONAL OPERATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Trade, Oceans and Environment jointly with the Subcommittee on Terrorism, Narcotics and International Operations of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, October 30, 1987, to hold a hearing on the Overseas Private Investment Corporation's lending practices and Mideast pipeline proposal.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate on Friday, October 30, 1987, to hold a markup on S. 1703, amendments to the Indian Self-Determination and Education Assistance Act; S. 795, San Luis Rey Water Rights Settlement Act, and further discussion of the Special Committee on Investigations.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADDITIONAL STATEMENTS

### THE 75TH ANNIVERSARY CELEBRATION OF ST. GEORGE'S ROMANIAN ORTHODOX CATHEDRAL

● Mr. RIEGLE. Mr. President, during the weekend of November 7 and 8, 1987, St. George's Romanian Orthodox Church of Southfield, MI, will celebrate 75 years of service to the Romanian-American community. The 2-day festival will include a grand banquet, Romanian dance and music, and speeches by many church and state dignitaries.

His Beatitude, Theodosius, primate of the Romanian Orthodox Church in the United States; Bishop His Grace, Nathaniel Popp; and Rev. Father Constantin Tofan, dean of St. George's Cathedral, are proud of the instrumental role St. George's has played in the development of the Romanian-American people. St. George's has been a center of religious worship, social life, and Romanian culture for thousands of Romanian-Americans in the Detroit area, as well as throughout the United States and Canada.

The cathedral was officially incorporated by the State of Michigan in 1913, but had been meeting the needs of the Romanian community when the first orthodox service was held in 1912. Historically, the majority of Romanians have been Orthodox Catholics, and were a Latin people surrounded by Slovak groups in Europe. Most immigrants came from the former provinces of Bucovina and Banat, under the old Austro-Hungarian Empire, to seek a new life of independence and prosperity. The first wave of immigrants was attracted to Detroit in the early 1900's because of the steel and automotive plants.

Not only has St. George's assisted Romanians in adjusting to their new homeland, but it has also served as the central cathedral for the Romanian Orthodox Episcopate—diocese—in the United States and Canada. The original building was located in Detroit and consecrated in 1917. The present cathedral was built in Southfield under the direction of Julius Petku, a Romanian-American contractor, and was consecrated in 1961. The new cathedral was constructed in the style of a Bucovina monastery in northern Romania.

In 1986, the church offices and classrooms underwent an extensive renovation and an impressive social hall was built, largely due to the contributions of Romanian-Americans, Peter and Irene Metes. John Rekolta, another prominent Romanian-American, did the construction and renovations.

St. George has many auxiliaries, societies and groups that have met and continue to meet the various needs of Romanian-Americans. The oldest auxiliary is the United Romanian Society, a fraternal order that helped establish the cathedral. The society also founded a Romanian insurance company to assist families of sick and disabled workers. In addition, the society sponsors the Hora Unirii, a cultural group that maintains Romanian culture through a choir and a folk dance group, helped support the cathedral since the early 1900's. The ladies auxiliary [ARFORA] is responsible for many of the cathedral's social and community functions. The Orthodox Brotherhood organizes numerous cultural and educational projects.

The cathedral also sponsors the American Romanian Orthodox Youth Organization [AROY], with a senior and junior chapter, which proudly teaches Romanian traditions and customs to young Romanian-Americans. The cathedral also has a Sunday school program for all age groups, a senior citizens' club, and celebrations which draw Romanian-Americans from all over the United States and Canada. All of these organizations work hard to perpetuate the Romanian Orthodox religion among Romanian-Americans.

The cathedral helps to support the Romanian-American Heritage Center, located near Jackson, MI, which documents and researches the history, struggles and accomplishments of Romanian-Americans. The cathedral also has a refuge committee to sponsor recent Romanian immigrants attempting to establish new lives in Michigan.

St. George's is to be commended for its monumental role in people successful in a variety of occupations and endeavors. Congratulations to St. George's Cathedral for its magnificent achievements over the years, and for the significant role it will continue to play in maintaining the Romanian Orthodox Church and Romanian traditions in the United States and Canada.●

### INDEPENDENT JUDICIARY, A KEYSTONE OF AMERICAN GOVERNMENT

● Mr. DOMENICI. Mr. President, now that the debate on the nomination of Judge Robert Bork to serve on the Supreme Court has ended, I hope that we can put that debate into proper perspective.

The controversy over whether to confirm Judge Bork was not a debate over his qualifications or his competence—everyone conceded that he is an outstanding legal scholar. Rather, the debate, at its roots, was really a controversy over the independence of the Federal judiciary.

In the view of this Senator, the opponents of Judge Bork attempted to impose an orthodoxy on Judge Bork, a legal litmus test. They took him to task for criticizing the rationale of a number of cases, even though a wide variety of other prominent legal scholars had expressed similar concerns. This attack on Judge Bork was, unfortunately, successful.

Apart from its effect on Judge Bork himself, this attack concerns me because it threatens to undermine the independence of the judiciary. The opponents of Judge Bork insisted that he adhere to their philosophy of the law, rather than interpreting the law using the Constitution and the intent of those who wrote the law as a guide. In doing so, the opponents of Judge Bork have sought to impose their values on the American legal system, and deprive the judiciary of the independence that is absolutely essential to the liberties of the American people.

The Grants, NM, Daily Beacon recently carried a particularly thoughtful article on the Bork nomination, written by Mark Acuff. In the article, Mr. Acuff makes this point:

> No one has yet concluded that Judge Bork is not qualified. They contend only that they disagree with him. That's not the way it's supposed to work.

Because I believe this article offers some very thoughtful reflections on the importance of an independent judiciary to our American system of government, I ask that the article, "Independent Judiciary a Keystone of American Government," be printed in the RECORD.

The article follows:

[From the Grants (NM) Daily Beacon, Oct. 15, 1987]

INDEPENDENT JUDICIARY A KEYSTONE OF AMERICAN GOVERNMENT

(By Mark Acuff)

It has not been much remarked, but the chief casualty of the Bork nomination proceedings in Washington has been the concept of an independent judiciary.

Independence of the judicial branch is one of the keystones of the American Experiment. It is worthwhile to note that it barely made it to that status, as a number of the founders were not at all sure what to do with the judicial branch after they got through with the executive and legislative arms.

But the concept of the fully independent third branch of government won out, and it has become one of the fundaments of the American way. The essence of the notion is that the judiciary shall be so insulated from reprisal or political strife that it shall be able to conduct its business without bother and render its judgments without concern or worry.

In other words, a judge has to be free to make an unpopular decision without fear of being bounced out of office or lynched. That there is no such independence of the judiciary in many countries goes without saying.

Yet in the Bork case, we have an obvious intrusion of the legislative branch into the judiciary. The legislative branch is supposed to ascertain that nominees to the federal bench are qualified, then leave them to their decisions. Instead, the present legislators in Washington have obviously based their decisions on politics. No one has yet contended that Judge Bork is not qualified. They contend only that they disagree with him. That's not the way it's supposed to work.

I was reminded of this the other day while reading some of the works of Eugene Manlove Rhodes, perhaps the most able writer New Mexico produced in the turn of the century period.

Rhodes wrote cowboy literature, but of a most literate sort. His cowboys are liable to spout Latin phrases or make references to the Bard of Avon while sitting around the campfire.

Rhodes Pass is in fact one of the long lost New Mexico places I'm dying to visit. The government won't let me. It's the pass over the mountains between Engle and Carrizozo. If you know that road, you must have lived here before WWII, as the government closed it when White Sands Missile Range was set up.

Anyway, the Rhodes essay which got my interest in this context was one bewailing the foot dragging of Congress on the issue of admission of New Mexico and Arizona as states.

Rhodes really let Congress have it, pointing out that the members of that August body were obviously far more interested in the number of Democrats or Republicans likely to be elected in New Mexico and her daughter territory than in the justice of the cause.

But Rhodes also brought up the matter of the independent judiciary, and in this case he was wrong. The writer was defending Arizona's proposed constitution, which contained a measure allowing recall of judges.

Now, this is a serious matter. In this day and age of high crime and much resentment of the "liberal courts, recall of judges might we pass muster if put before the voters. Recall means, in a nutshell, that a judge who offers up an unpopular decision can be removed from office by action of the voters.

Arizona is in the process of recalling a governor at the moment, to the notion is not that hard to believe a real. If Arizona's proposed constitution had been accepted in Washington, they might well be recalling judges too.

As it was, Arizona was still trying to keep that in her constitution as late as 1912, when both states were admitted to the Union. But President William Howard Taft vetoed the idea and told Arizona to take the obnoxious item out of the constitution or stay a territory.

Arizona decided it wanted to be a state more than it wanted to recall unpopular judges, so out the provision went, Arizona revised her constitution, and finally became a state two weeks after New Mexico did.

And that is the only reason Arizona did not become a state the same day New Mexico did. Every citizen of the two states ought to know that. It's an important history lesson.●

## UNITED STATES-GERMAN FRIENDSHIP HONORED BY THE PRESIDENT OF THE GERMAN BUNDESTAG

● Mr. RIEGLE. Mr. President, by resolution unanimously adopted by the Senate and the House of Representatives, October 6, 1987, was officially designated as "German-American Day."

To mark that event, the President of the German Bundestag, Dr. Philipp Jenninger, made an eloquent statement on the subject of United States-German friendship before the 30th plenary sitting of the German Bundestag on October 8, 1987.

Mr. President, I commend Dr. Jenninger's statement to the attention of my colleagues, and ask that the full text of his remarks be printed in the RECORD.

The statement follows:

STATEMENT ON GERMAN-AMERICAN DAY BY THE PRESIDENT OF THE GERMAN BUNDESTAG, DR. PHILIPP JENNINGER, IN THE 30TH PLENARY SITTING OF THE GERMAN BUNDESTAG ON OCTOBER 8, 1987

Ladies and gentlemen, on 2 October this year President Reagan, on the basis of a resolution adopted by both Houses of the Congress of the United States of America, declared 6 October 1987 to be German-American Day. On behalf of the German Bundestag, I should like to thank President Reagan and the U.S. Congress for this special gesture. We consider this act to be tangible evidence of the close bonds of friendship liking us to the United States of America. This day is intended to acknowledge the achievements of German immigrants in building up America. Our fellow countrymen, the first of whom emigrated to America over 300 years ago, found a home in America through their diligence and assiduity and made a major contribution to the country's prosperity. Many became pioneers in building up the country and laid the foundation for the warm and friendly feelings between Germany and America which, despite serious upheavals, have stood the test of time.

Ladies and gentlemen, both our friendship with the United States and the North Atlantic Alliance have guaranteed us peace and freedom for over 40 years. In future too, strenthening the Alliance, its unity and cohesion must have priority. Our friendship with the United States of America plays an indispensable role in this connection.

May I also say the following: Maintaining forces on another continent for over 40 years is a great political achievement in an alliance whose only aim is to defend itself. In my speech at the White House on the occasion of the proclamation of German-America Day, I pointed this out, too. Since the Federal Republic of Germany was founded, over 10 million American soldiers have lived with their families in the Federal Republic. They perform their service for our common freedom. Let me say this to the people of the United States: The overwhelming majority of our population supports the presence of the American soldiers and regards them as friends.

However, it is not so much our common security interests but, rather, our shared ideas of freedom, human dignity and democracy that are of decisive importance for the stability of our political relations. Americans and Germans may differ on individual issues but they agree on the essential issue, namely our commitment to freedom, and nowhere is this borne out more clearly than in Berlin.

Ladies and gentlemen, for the future of our two countries it is of vital importance that our young fellow citizens, too, get to know each other. I am very pleased that the German Bundestag, through the Parliamentary Youth Exchange Programme which it agreed with the U.S. Congress and which we want to continue, is making an important contribution in this respect. Only in this way is it possible for the younger generation, too, to become familiar with our shared basic beliefs and convictions and learn to appreciate them.●

## AHEPA CONVENTION

● Mr. SARBANES. Mr. President, on August 16–21 more than 3,000 members of the Order of AHEPA, the American Hellenic Educational Progressive Association, gathered in New Orleans for their annual national convention. It was AHEPA's largest convention ever, widely attended by prominent Greek-Americans and U.S. public officials. Our distinguished colleague on the House side, Representative GUS YATRON of Pennsylvania, had the honor of delivering the keynote address at AHEPA's grand banquet. I think his succinct analysis of the current situation in the Aegean was most incisive, and I ask that his remarks be printed in the RECORD.

The remarks follow:

I come before you as a fellow Hellene, a fellow Orthodox Christian, and a fellow Ahepan. Rather than talking about the history of U.S. policy toward Greece, Cyprus, and Turkey, a subject on which you are well-versed, I will address other aspects of these subjects which are so vital to Greek-Americans.

AHEPA has always been at the forefront of matters concerning the Greek community both in the United States and abroad. I would like to offer several observations as to

why we should continue to fight the legislative battles, why we should continue to influence public opinion, and why the United States has an obligation, morally, and strategically, to resolve the various issues with which we, as Ahepans, are intimately involved.

The foreign policy concerns eloquently addressed by previous speakers are not exclusively Greek concerns. They are issues of American concern. Time and time again, critics of our efforts suggest that we are a special interest group advancing a Hellenic agenda. They also advance the notion that we have a monolithic view of U.S. policy towards Greece, Cyprus, and Turkey. We should reject these arguments outright, as they have no foundation and are motivated by ignorance and insensitivity.

Secretary of State Shultz on February 22, 1984, said in a speech delivered in Peoria, Illinois: "The cause of human rights is at the cost of American foreign policy, because it is central to America's conception of self. These values are hardly an American invention. But America has perhaps been unique in its commitment to base its foreign policy on the pursuit of such ideals."

When we raise the issue of religious persecution in the Soviet Union, we raise it as Americans.

When we raise the issue of human rights in El Salvador, we raise the issue as Americans.

When we focus public attention on the policy of forced starvation by the Ethiopian government, we raise the issue as Americans.

We raise these issues because we have a moral obligation to offer support to the oppressed and a strategic and humanitarian interest in pressuring governments to respect human rights and to promote democracy.

If the United States calls for the Soviets to withdraw from Afghanistan, then why not call for the Turkish troops to withdraw from Cyprus?

If we condemn Cuba for torturing prisoners of conscience, then why not condemn Albania for persecuting Greeks?

If we invoke the Helsinki Accords when criticizing the Soviets for persecuting Ukrainian Catholics, then why not invoke the Helsinki Accords with Turkey when it comes to the ill-treatment of the Patriarchate and the remaining Greek-Orthodox in Turkey?

The policy battles we have fought together are just as important to America as any other nation is confronted with. Americans of Greek descent are fully aware of this reality, but, unfortunately, we still find ourselves criticized by being a Greek lobby. As a consequence, our policies do not receive the full, unified support of successive Administrations they so richly deserve.

The moves toward democracy in South Korea and in the Philippines were influenced strongly by a determined bi-partisan message from Congress and the executive branch, delivered forcefully to both regimes. Our efforts were not viewed as being motivated by ethnic interests. They were viewed as advancing American interests in a way which benefitted the forces of democracy and human rights.

Just think how effective we would be if the United States demanded that there be human rights in Albania, or fervently sought a just and lasting solution in Cyprus?

What would happen if a unified United States government called on Ankara to allow the Patriarchate to freely exercise its god-given religious beliefs?

Often we know the problems which face our community, but we wonder what we, individually, can do to resolve these seemingly overwhelming and complex issues.

First we must be unified. More than ever before, our standing together to voice our collective concern is vital.

I ask that you continue to use your voting power, and to express your opinions to legislators, and public officials on all levels. As you convey your concerns, do not be put off by accusations of ethnic bias. Instead, make it very clear to whomever your audience happens to be that you are speaking as an American citizen who has a unique understanding of how better to preserve our great country's interests. We must remain committed to righting the seemingly unnoticed wrongs suffered by peoples throughout the world, and those suffering include our Greek brethren in Albania, Turkey, and Cyprus. To remain silent, even in the face of criticism, serves only to perpetuate these iniquities, and we, as a community, must never let that happen.

In the final analysis, the Afghan who has been deprived of his right to return to his homeland is no more or less deserving of our support than the Cypriot who one day hopes to return to his native land. We cannot right for one while ignoring the other. Double standards do not advance democracy, and as descendants of the originators of this treasured concept, it is up to us to make sure that these principles are adhered to. This is our sacred obligation as Americans of Greek origin—we must not compromise democracy and freedom. God gave us these gifts to share with the world in word and in deed.●

## THE DEBT BOMB

● Mr. BIDEN. Mr. President, it is clear that an underlying problem of our Nation's economy is what is often called "The Debt Bomb." While there are probably multiple causes for the recent instability in the financial markets of the world, surely a major reason is the debt bomb.

The best summary I have seen of the serious debt problem that affects our economy, is contained in an article by H. Ross Perot entitled "A Tycoon Looks at the Debt Bomb." In this article, Perot analyzes the wide variety of debt problems that have worried many of us for some time.

We have accumulated a staggering array of debt. Domestically, we have a national debt of $2.3 trillion which will surely reach $3 trillion by the end of the decade. As consumers, we have gone on a buying binge that has left us deeply in debt. Corporations have increased their debt burden, including takeover debts. And internationally, thanks to our budget and trade deficits, we are now the world's largest debtor Nation. The stability of the international economy, which affects our own in many ways, is further threatened by the debts of other nations.

This plethora of debt does indeed raise serious questions about the outlook for the future. How are we Americans going to meet the challenges it raises? In Mr. Perot's words:

Will we be the generation that allowed this great country to cease being first and best in the world? Will we leave our children with an unconscionable multi-trillion-dollar debt, so that we can continue our debt-spending binge? Will we be the first generation to take more than we gave, and fail to pass on a stronger country and a better life to our children?

I agree with Mr. Perot. Most Americans intend to solve our problems rather than pass them on to future generations. The question is, how? It is my hope that the budget summit of the President and the congressional leadership will make the first small beginning on this huge problem. When the shock of the financial turbulence of recent weeks wears off, we must not let down. Our efforts must continue, and we must have the patience to see them through.

Mr. Perot's article, which appeared in the Washington Post on October 25, 1987, is a worthwhile description of the problem which I hope every Senator will read.

For that reason, I ask that the article be printed in the RECORD.

The article follows:

A TYCOON LOOKS AT THE DEBT BOMB

(By H. Ross Perot)

I got out of the stock market about a year ago because I couldn't understand what was happening. The optimism of the market didn't fit with the problems in the economy. So I invested instead in short-term, high-quality liquid securities—such as Treasury bills and high-grade bonds.

Last week's turmoil on Wall Street brought home to all of us how serious our economic problems are. The question we face now is whether we can summon the national will to start solving these problems and stop living for the moment.

The first thing we have to do is stop telling ourselves that everything is all right, and that all the fundamentals are sound. Such statements ignore the obvious.

A person with a drinking problem must admit that he is an alcoholic before he can be cured.

So let's take an honest look at our problems at the end of this topsy-turvey week on Wall Street. What forces caused the dramatic ups and downs in the stock market, sending economic signals flashing like the fire-warning lights on an aircraft instrument panel? Here are some of them:

The United States now has a $2.3 trillion debt and will have a $3 trillion debt by 1989.

Our country, effectively, does not have a national budget. We avoid facing the budget issue by passing continuing resolutions that put us deeper into debt each year.

There is no correlation between taxes paid by the people and money spent by the government. More and more, our national debt is being funded by foreign investors. We no longer "owe it to ourselves." These foreign investors can stop funding our debt at any time they lose confidence in the dollar, leaving us vulnerable at an inopportune moment.

We are losing in international business competition. In 1986, we lost our position as the world's leading exporter and we had a

trade deficit in high-tech products, supposedly the base for future growth.

Some of our banks have serious problems. Long-term loans to Third World countries were made with short term-dollars borrowed from Middle Eastern countries by U.S. banks. This money was loaned to countries that cannot repay their debts, leaving the lending banks exposed. Much of this burden will eventually be shouldered by the American people.

Savings and Loans have serious problems that will require tens of billions of dollars of taxpayer money to correct because of speculation and, in some cases, fraudulent activities. The U.S. taxpayer will ultimately bear the burden, at a time when we are already spending far beyond our means.

The typical American spends everything he makes—everything he can borrow—and keeps no savings. The individual-savings safety net does not exist. If people lose their jobs, they become instant paupers, with unpaid bills.

Our principal exports from New York harbor are scrap steel and waste paper to Japan. These materials are shipped back to America as automobiles and corrugated cardboard boxes containing sophisticated consumer electronics. It is hard to believe that the greatest nation in the world could be reduced to become a scrap salesman—but it's happening.

We Americans have evolved from a tough, resilient people, will to sacrifice for future generations, into a people who want to feel good now—at any price—and let the future take care of itself. Put more directly, we have become credit junkies, shooting up huge sums of borrowed money on a government and personal level—looking for another high.

This is our country. We, the people, own it. It belongs to us, yet we are acting like the inheritors of third-generation wealth, leading the good life now, with little concern for the future. We should face these problems now and resolve them while our nation is still strong.

Don't blame our elected officials for failing to address these problems, and making soothing statements while the fire lights are flashing. They are simply reflecting our priorities, as determined by endless, but accurate, polls. Let's fact it: We, not our elected officials, are the dwarfs and wimps.

The fundamental laws of economics and common sense have not been repealed, even though for a time, it appeared they had been. Specifically:

The endless orgy of raids and takeovers had a lot more to do with making large fees and personal profits than with revitalizing corporations.

The multimillion-dollar executive bonuses, golden parachutes, and poision pills never made any economic sense.

Junk bonds, which by definition are junk, will be worn like anvils around the necks of both companies and junk-bond buyers for years, and will cause significant damage to our economy.

Any industry which can afford to pay 28-year-old boys $500,000 to $1,000,000 a year for unproductive work on Wall Street sends a signal to the world that its fees are excessive.

What are we going to do about this? Like the alcoholic who wants to stop drinking, we should begin by being honest with ourselves. Perhaps the following questions will force us to face the fact that we have become credit junkies:

Will we be the generation that allowed this great country to cease being first and best in the world? Will we leave our children with an unconscionable multi-trillion-dollar debt, so that we can continue our debt spending binge? Will we be the first generation to take more than we gave, and fail to pass on a stronger country and a better life to our children?

Surely, the answer most Americans would give to these questions is a resounding "No"!

We must cut spending and raise taxes to pay our bills. We all know it. Let's make sure our leaders understand that this must be done.

If we will aggressively work together, sharing the sacrifices fairly, to correct these problems while our country is still strong and our people are still at work, we can minimize the level of sacrifice required. There is no question that the American people are more than willing to do their share. They need strong leaders, both in business and in government.

It is fundamentally important that we keep our people at work, because the tax base of the United States rests squarely on the strong, broad shoulders of the millions of working American men and women. Even if wealth and corporate profits were taxed at 100 percent, we could not begin to raise the money needed to operate this country. The taxes from millions of working Americans are essential to fund our country's needs. Obviously, if millions of our people are not working, not only will we be unable to pay our bills as a nation and individually, but we will have to create huge make-work or welfare programs, at a time when the United States does not have the money.

We have unfairly blamed the American worker for the poor quality of our products. The unsatisfactory quality and appearance of many of our products is the result of poor design and engineering—not poor assembly.

You can literally see the difference between a car made in Japan and a car made in the United States by an American manufacturer. If you take a car made in Japan by Japanese workers and place it alongside a Japanese car made in a U.S. plant by U.S. workers (led by Japanese executives) there is no difference in quality. The Honda cars made in this country by U.S. workers are of such high quality that Honda intends to export them.

Obviously, the American worker is not the problem. The problem is a failure of leadership. Our business leaders have failed to provide strong—effective leadership. They—not the workers—are the problems.

Our challenge is to make the phase, "Made In the USA," the standard of excellence for the world once again. This will dramatically increase the demand for our products, strengthening and expanding our job base.

We don't have to satisfy our competitive instincts by watching sports on television. When we go to our jobs each day, we are playing an international economic superbowl where the best product wins—and where there is not even a red ribbon for second place. The losers lose their jobs, not just a game.

The only way to succeed is to unite as a team, take on the world, and win.

Could anything be more important, or more worth the sacrifices involved, than working together to build a better world for all of our children?

Let's tell our elected leaders we want to repair our economic system before it breaks down. We know what we have to do. Let's get started. What are we waiting for? Our leaders are waiting to hear from us.

Let's stop kidding ourselves. Let's admit we have serious economic problems, and let's all work and sacrifice together to solve them—for our children.●

## POLISH AMERICAN HERITAGE MONTH

● Mr. SARBANES. Mr. President, it is with deep admiration for the achievements of the Polish people that I reflect on Polish American Heritage Month, October 1987. The Polish American Congress, a national organization currently observing its 43d anniversary, sponsored this national celebration under the fine leadership of its President, Aloysius Mazewski, and National Committee Chairman, Michael Blichasz. I am pleased to join with the Polish American community and Americans everywhere in paying tribute to the accomplishments of the Polish people and American citizens of Polish descent.

The Polish people's indomitable spirit and their dedication to freedom have been evident throughout the tragic history of their nation, whose national banner once bore the motto, "For Our Liberty and Yours." A highlight in their struggle for liberty came in May 1791 when, just 2 years after the adoption of the U.S. Constitution, they created a historic document abolishing class distinction, establishing religious toleration, and declaring the equality and protection of all citizens under the law. This document, modeled directly on that of our Nation and recognized as the second written constitution in history, is revered by Poles and persons of Polish descent everywhere. Unfortunately, the Polish experience with freedom under their Constitution was short lived as Poland was partitioned again in 1792 and 1795. When Poland once again gained its independence in 1919, the newly formed state adhered to the basic ideas of the original 1791 document. Tragically, enjoyment of these freedoms was ended in 1939 when Hitler overthrew the Poles' beloved country.

Poles have continued to this day to assert their dedication to the principles of freedom despite the series of partitions and the suppression they have endured. The Polish people take great pride in the accomplishments of Nobel Peace laureate Lech Walesa, who in founding the Solidarity Labor Federation, or "Solidarnosc," 7 years ago began what has come to be a powerful symbol to oppressed peoples everywhere, and in His Holiness Pope John Paul II, the first Polish-born Pope in history. Leszek Muczulski, leader of the Confederation for an Independent Poland, Solidarity leaders Zbigniew Bujak, Tadeusz Jedynak, and Waladyslaw Frasyniuk, and countless other Poles in their homeland and around the world continue to champi-

on human rights and the cause of freedom.

Let us not forget, furthermore, the contributions of Poles and Americans of Polish descent to the cause of freedom on our shores. Since the earliest days of our colonial beginning, the United States has benefited again and again from the commitment of its Polish American citizens to this Nation's struggle for a free society. In 1608, almost 12 years before the Pilgrims landed at Plymouth Rock, Polish artisans arrived in Virginia's Jamestown. By the fall of that year they had built America's first glass factory.

Two of Jamestown's Polish colonists are credited with saving the life of Capt. John Smith during an Indian ambush in 1609. But it was in 1619 that these sons and daughters of Poland demonstrated their unquenchable love of freedom. In that year the first legislative assembly on the American Continent met at Jamestown. However, some of the inhabitants, including the group of Polish artisans, were denied the right of representation. Refusing to work in the colony's glass and soap factories until this injustice was removed, these Polish artisians quickly won their voting rights.

During the American Revolution, Tadeusz Kosciuszko and Count Kazimierz Pulaski, two heroic Polish nationals, rallied to the banner of our newborn country as it struggled for its independence. With the single exception of Lafayette, Kosciuszko was the only foreigner ever admitted to the American Order of the Cincinnati, an honorary society of Revolutionary War officers. Thomas Jefferson wrote of Kosciuszko:

> As pure a son of liberty as I have ever known and of that liberty which is to go to all and not to the few or rich alone.

After America's war, Kosciuszko returned to Poland, where he courageously led the movement which created the Constitution of 1791 and later in the heroic but unsuccessful efforts to repel the foreign invasions which followed.

Another heroic Pole, Count Pulaski, arrived in America in July 1777 and shortly thereafter was commissioned as a brigadier general by the Continental Congress. During the spring and summer of 1778, General Pulaski recruited and organized an independent corps of cavalry and infantry in Baltimore and its neighboring areas, a legion that served with distinction in South Carolina and Georgia. Pulaski eventually gave his life for the cause of American freedom when he was shot and mortally wounded during the siege of Savannah.

From these early examples of the contributions Polish Americans have made to our land and to the cause of freedom throughout the world, there are thousands more which can be found in each generation which followed. Today Americans of Polish descent number well over 10 million and their contribution to the strength and vitality of this Nation is beyond measurement. The list of distinguished Polish Americans grows with each generation and marks the ranks of every profession and way of life. In Government, Polish Americans have distinguished themselves as Senators and Members of Congress, Cabinet officers, Governors, mayors, jurists, and countless other Federal, State, and local public servants. Polish Americans have contributed significantly to American industry and strengthened American labor. They have added their many talents to our intellectual, artistic, and social life. Above all, they have always defended our Nation's freedom and honor.

I would like to note that the U.S. Senate passed on October 6 of this year Senator MIKULSKI's amendment to the 1988 Senate Foreign Relations Authorization Act, the "Polish Permanent Resident Adjustment Act of 1987" and also passed this on October 15 as part of the Commerce, Justice, State, the Judiciary, and Related Agencies appropriations bill. This act would grant permanent resident status to those qualifying Poles who fled their country as a result of the imposition of martial law in 1981. This recent Senate effort, the passage of supplemental appropriations this year for NSZZ "Solidarnosc," and the annual Polish American Heritage Month are but a few examples of our Nation's compassion toward Poland's people and our commitment to a free and independent Polish nation.

In joining with Americans throughout our land in paying tribute to the Poles and Polish Americans, I do so with deep respect and admiration for the strength and quality that Americans of Polish ancestry have brought to this country. Theirs has indeed been a contribution which has immeasurably enriched our national life. Let us hope that we will see again a prosperous and free Poland, a nation that fulfills its own heritage and destiny.●

## PAUL FISHER

● Mr. LEAHY. Mr. President, we have all been heartened by the recent progress toward a peace agreement in Central America. We may be seeing the first glimmer of hope for an end to the terrible political violence that has plagued that region for decades. But, as this week's assassination of Herbert Anaya, president of the Human Rights Commission in El Salvador shows, real peace is a long way off.

I rise today to call to the attention of the Congress and the American people two recent incidents that should not go unnoticed in Nicaragua.

Three weeks ago, the Contras in Nicaragua seized two Nicaraguan priests who were working with a local peace commission. They were held for several days and released in a remote village in the presence of local farmers.

On October 17, a young American named Paul Fisher, a native of California, graduate of Dartmouth College and member of Witness for Peace, was traveling in a remote area of Nicaragua where there had been reports of heavy fighting. He had gone there on behalf of Witness for Peace to document the effects of the war on Nicaraguan civilians.

According to the State Department, Mr. Fisher was stopped at a roadblock set up by the Contras. He, along with several Nicaraguans, was detained by the Contras and has not been heard from since. Two of the Nicaraguans subsequently escaped, and reported that the Contra unit was also holding a Contra deserter who had been captured. They said the Contras cut a hole in his tongue and were leading him by a rope through his tongue.

The State Department says it does not know why the Contras have detained Mr. Fisher. The Contra representatives in Washington we have contacted claim they want to release him, but not until they can do so safely and in the presence of neutral observers, who can attest that he is in good condition. That is what the Contras have been saying for 12 days.

Mr. President, many Vermonters, and indeed, many Americans, wonder why it is taking so long for the Contras to free Mr. Fisher. They don't understand why the President of the United States, who entertains the Contras in the White House, can't get him released. They wonder why the Contra command has not arranged for representatives of the Red Cross or the Catholic Church to take custody of Mr. Fisher.

The Contras' past treatment of prisoners is cause for great concern about Paul Fisher's safety. My office has been in daily contact with the State Department urging action to induce the Contras to release Mr. Fisher forthwith. The response has not been encouraging. The State Department says it has asked the Contras to free him, but can only wait to see what happens. This is unacceptable on its face. The State Department is the voice of the United States Government abroad, and it certainly can "influence" the Contra authorities, who depend on the largesse of the administration to continue their war against the Government of Nicaragua.

Mr. Fisher is an American citizen in peril, and whether or not the State Department shares his political views or approves of his activities on behalf of Witness for Peace in Nicaragua, it

has a responsibility to protect the safety of an American in a foreign land insofar as it can. Once again, I call on the State Department to take vigorous action to make clear to the Contra leadership that Mr. Fisher must be released immediately and in good health.●

## CALL TO CONSCIENCE

● Mr. ARMSTRONG. Mr. President, with all the talk about glasnost, the new policy of openness in the Soviet Union, one would be led to believe that things are looking brighter for the average citizen in that country. Unfortunately, this is most definitely not the case as yet.

Earlier this week, I received a letter from Roald Zelichenok, a man that I met several years ago when I visited the Soviet Union. Mr. Zelichenok was a scientist and Hebrew teacher. At the time, he predicted that his work on human rights would result in his eventual imprisonment. Unfortunately, his prediction proved accurate. He spent a year and a half imprisoned under harsh conditions as a prisoner of conscience, largely because of his activism on behalf of Soviet Jews.

Then several months ago he was released unexpectedly and returned to his home. While we rejoiced with him at his release, I and others are deeply concerned about the catch-22 situation he is trapped in at this time.

After his release, Mr. Zelichenok was not permitted to return to his work at the Academy of Sciences where he was employed prior to his arrest. In addition, he has been refused other work because he is overqualified.

Under Soviet law, anyone who is unemployed for 4 months can be arrested and sentenced to 2 years imprisonment for the crime of parasitism—not having a job. However, the reason he does not have a job is because of the refusal of the academy—a state institution—to rehire him.

To make matters worse, according to Mr. Zelichenok's letter,

> • • • from now on I may be arrested [at] any moment even after getting a job because the "crime" (that is unemployment that lasted more than 4 months) has already been committed. All that in spite of my legal right to be reinstated in [the] Academy of Sciences that employed me before my arrest.

So now, Roald Zelichenok and his wife, Galina, wait. They wait for employment. They wait for permission to emigrate to Israel. But as they wait, there is no certainty that either will occur, and reimprisonment looms as a real possibility.

Clearly, glasnost has changed a number of lives for the better. However, we cannot even begin to estimate how many other citizens remain in a world of uncertainty and apprehension about their future in the Soviet Union.

A recent article in the Intermountain Jewish News quotes an Australian Jewish leader, Isi Leibler, who has worked for years on behalf of Soviet Jews. He states,

> • • • compared to my last visit in 1980 I have come away with an impression of real change in the whole atmosphere and tone surrounding the discussion of Jewish human rights issues in the Soviet Union. The critical question, however, is whether the talk will be translated into action. Like the long-term refuseniks and other Jews waiting to emigrate, I will suspend judgment on whether the change in style and rhetoric really amounts to a change in policy and substance.

Mr. Leibler has summed up the situation accurately. While I sincerely hope the changes that are being discussed in the Soviet Union become policy, I will reserve judgment until cases such as the Zelichenoks are resolved without enormous amounts of work and frustration. Only at that time will the rhetoric about glasnost become reality.

In the meantime, each of us in the free world must remain vigilant of what is actually happening in the Soviet Union. Only in this way, will we guarantee a respect for human rights.●

## INFORMED CONSENT: WASHINGTON

● Mr. HUMPHREY. Mr. President, I would like to commend the hundreds of women from every State that have written to my office in support of informed consent legislation. These special women deserve recognition because they are victims of a cruel injustice, and yet they are allowing their stories to be told hoping it will help others.

The injustice of which I speak is the lack of information that is provided to women considering abortion. Time after time, women go into abortion clinics seeking honest, straightforward advice, but instead are told nothing except the possible benefits of an abortion. Little if anything is said about the alternatives, risks and effects of the procedure. As a result, thousands of women nationwide are suffering from depression, anxiety, and even sterility from their abortions, something they were never warned might occur.

Mr. President, this injustice can be rectified through the informed consent legislation, S. 272 and S. 273. I urge my colleagues to support the bills, and I ask that two letters from the State of Washington be inserted into the RECORD.

The letters follow:

WASHINGTON STATE, *June 6, 1986.*

DEAR SENATOR HUMPHREY: I'm writing this letter today concerning informed consent. If we were not living in a day and age in which deception and double standards are overrunning our legal system, I would not have to write this letter today. You see, I'm a victim of abortion and, even if it takes until my last breath, I must be heard.

When I was 17 I found myself in a crisis pregnancy. I was afraid of what everyone, including my family, would think. My boyfriend pressured me to have an abortion. When I went to the local family planning clinic, I sought guidance and wanted to know what I could do about my situation. I wanted a helping hand. When I walked into the clinic, I trusted the nurses and doctors and thought they were concerned about my health enough to help me make a decision, not make my decision for me.

Only one solution was strongly recommended that day. When I questioned the development of my baby, I was told that it wasn't a baby yet and that it looked like a tadpole. Since that day I have learned differently. God forgive them for trying to keep me ignorant. I was told that abortion was simple and safe and that I could go on and live the rest of my life and have children when I was in a position to provide for them. I heard no scientific facts that day, only biased opinions. I was not told what abortion itself could do to me in the years to come, only that it was "safe and simple." I was not told that I would abuse myself with alcohol, try to kill myself, develop an eating disorder and have terrible dreams. Worst of all, I was not told that I might never have another child. It has been 14 years since my "safe and simple" abortion and I have never been able to have another child.

If I knew then what I know now about the developing baby in my womb and the severe physical and psychological effects which abortion could have on me, I would never have taken the step that I took that day. You see, the decision is irreversible and I will have to live with the pain for the rest of my life.

Please stop the lies and help protect young women like myself so that we can be assured the right to be informed.

Sincerely,

SUE LILJENBERG.

MILTON, WA, *June 6, 1986.*

TO WHOM IT MAY CONCERN: As a young girl shortly after my sixteenth birthday, I made a decision that has greatly impacted my life. I chose to end the life of my unborn child.

The abortion procedure was terrifying and far from painless, leaving me with many emotional scars. The added tragedy is the lack of knowledge that preceded my decision. I was counselled by Planned Parenthood, yet no information was given about the ramifications, both physical and emotional, associated with abortion.

I question the motives of anyone who deliberately chooses to keep young women ignorant. My life, and the choice I had to make, could have been drastically altered. My years of suffering to overcome guilt caused alcohol abuse and anorexia nervosa. Women today need to know what they are doing when they choose to destroy their unborn children. My hope is for abortion to stop, but until that day comes isn't it ethical that correct information be given to anyone going through a surgical procedure?

Sir, I urge you to consider this problem and make it a priority. Lets move forward with informed consent.

Sincerely,

PATTY CHRISTOFFERSON.

## ON HOUSE AND SENATE TAX BILLS' IMPACT ON REMICS

● Mr. D'AMATO. Mr. President, I am very concerned about the effective date of a provision in both the House and Senate tax bills that is causing increased volatility in our already battered capital markets. I understand that neither the Joint Committee on Taxation nor the tax writing committees have been able to offer a reasonable explanation for these retroactive effective dates for new section 860(e) of the Internal Revenue Code.

This provision affects the tax treatment of Remics and proposes to close a loophole that has not yet been opened. However, billions of dollars of transactions scheduled to close this week have been either postponed, at considerable cost and risk to the underwriters, or reconstructed in a more costly fashion to restrict potential liability of the investment banks.

Remics are instruments created by the 1986 Tax Reform Act to foster a more liquid secondary market in residential mortgages. Such liquidity results in lower cost home financing for millions of Americans throughout the country. These instruments are structured so that investors buy either a debt interest or an equity interest, called a residual. Holders of residual interests often incur phantom income which, under the proposed change, could not be offset against tax-exempt status. Under this provision, this phantom income could affect payments to the holders of the debt interests. Remics take a lot longer to settle than ordinary corporate bonds. Frequently, 8 weeks will elapse between the date the bonds are priced, and presold, and the time final settlement takes place.

Therefore, a retroactive effective date of October 14, or October 16, has resulted in over $10 billion of bonds being mispriced. This could result in the issuers sustaining significant losses.

It is imperative that comfort be given as soon as possible to Wall Street that this effective date will be changed to the original date suggested by the Treasury Department; that is, November 16, 1987.

I am confident that no one involved in the legislative process would intentionally add to the volatility currently afflicting Wall Street. However, this unintentional act has done just that.

Thank you, Mr. President.●

## AIR PASSENGER PROTECTION ACT

● Mr. CHAFEE. Mr. President, I am a cosponsor of S. 465, legislation to ban the manufacture, sale, importation, or possession of plastic handguns. In my view, the bill now before the Senate—the Air Passenger Protection Act—would be a timely and fitting vehicle for discussion of the hazards posed by plastic guns. So I am disappointed that Senator METZENBAUM found it necessary to withdraw his amendment.

The alarming rise in international terrorism in recent years has focused increased attention on the need for improved airport security measures. There has also been a growing concern about technological developments which make possible the manufacture of firearms which may not be detectable by security devices currently in use. Until we have in place the technology to provide for the detection of weapons made with nonmetal materials, I believe we must take steps to prevent such weapons from being made or imported.

This bill would ban those firearms which are not readily detectable by metal detection and x ray systems commonly used at airports and other security checkpoints in the United States. Efforts are underway by the Federal Aviation Administration, the Customs Service, and private industry to develop more advanced detection instruments, but it could be years before these are in use. In the meantime, the development of weapons made with plastic or other nonmetal materials could continue.

The U.S. Secret Service testified in favor of S. 465 in a hearing held earlier this year by the Subcommittee on the Constitution. According to that testimony, in 1986, 240 dangerous weapons were identified by screening efforts at the White House, of which 74 were handguns. In Secret Service screening activities away from the White House from October 1986 to June 1987, 198 handguns were detected.

There are people who possess handguns who disregard the laws and regulations governing use of such weapons. That is why detection systems are in place in airports and in many public buildings. To put into the hands of these individuals a handgun which is more difficult to detect certainly jeopardizes the safety and security of all of us.

Although the Senate will not take up this measure today I remain hopeful that action can be taken soon. We have an opportunity through the passage of this legislation to act before a terrible tragedy occurs, rather than after the fact. I hope this legislation can be brought before the Senate at the earliest possible time.●

## FEDERAL COURT NOMINATIONS

● Mr. LEAHY. Mr. President, five nominees to the U.S. district court have been approved by the Judiciary Committee and are now on the Executive Calendar. Based on the investigation conducted by Judiciary Committee staff, and on the record made at the hearings held on these nominations, the nominees appear qualified for the positions to which they have been nominated. For the information of my colleagues, who will soon vote on these nominations, I offer the following brief summaries of the nominees' qualifications, and of the testimony elicited at the hearing and in follow-up questions.

First. David G. Larimer has been nominated to the U.S. District Court for the Western District of New York. The nominee has served since 1983 as a U.S. magistrate in the same district. Previously, he was in private practice with various firms in Rochester, NY, and also served as chief appellate law assistant to a State appellate court, and as an assistant U.S. attorney in the western district of New York and in the District of Columbia. The nominee is 43 years old, and is a graduate of St. John Fisher College and of Notre Dame Law School. The ABA Standing Committee on the Federal Judiciary rated him "Well Qualified" for the position to which he has been nominated. His reputation among the bar and interested members of the public appears to be generally good.

At a hearing held on June 18, Mr. Larimer, after being introduced by Senator D'AMATO, responded satisfactorily to questions posed by Senator HEFLIN on his experience and background. In response to written questions from me, the nominee provided further information on his background, and responded satisfactorily to questions concerning his familiarity with the local bar in the western district of New York, his experience in court administration, and the role of a Federal judge in facilitating settlements.

Second. James A. Parker has been nominated to the U.S. District Court for the District of New Mexico. The nominee, a 50-year-old graduate of Rice University and the University of Texas School of Law, has spent his entire professional career with an Albuquerque law firm. His practice has been concentrated in the areas of civil litigation—particularly professional liability and other insurance defense work, and commercial litigation—and real estate and business practice. Mr. Parker was rated "Well Qualified" by the ABA, and appears to enjoy a favorable reputation among members of the New Mexico bar and other members of the public in his home State.

At the hearing held on September 11 on his nomination, at which I presided, the nominee was introduced by Representative JOE SKEEN. Mr. Parker responded satisfactorily to questions concerning his legal writing ability; the qualities of a good trial judge; his sentencing philosophy; and his public service activities.

Third. William L. Standish has been nominated to the U.S. District Court

for the Western District of Pennsylvania. The nominee has served since 1980 as a trial judge in a Pennsylvania State court of general jurisdiction. He spent the previous 24 years in private practice with a Pittsburgh law firm, specializing in commercial, personal injury and workers' compensation litigation. Judge Standish is 57 years old, and is a graduate of Yale University and the University of Virginia Law School. He appears to be well regarded by his professional colleagues and other associates, and was rated "Well Qualified" by the ABA committee, with a minority of the committee rating him "Exceptionally Well Qualified."

At the hearing on September 11, at which he was introduced by Senators SPECTER and HEINZ, Judge Standish was examined concerning his experience in criminal law matters; potential conflicts of interest posed by his substantial stock holdings; and his pro bono activities. His responses were satisfactory.

Fourth. Ernest C. Torres has been nominated to be U.S. District Judge for the District of Rhode Island. The nominee conducts a private law practice in Providence, RI. Previously, he served for 1 year as an assistant vice president of Aetna Life and Casualty Co. From 1980 to 1985, Mr. Torres was a judge of a Rhode Island State trial court. Prior to 1980, he was in private practice, and also served 5 years as a member of the Rhode Island House of Representatives. Mr. Torres is 46 years old and is a graduate of Dartmouth College and Duke Law School. His reputation among the local bar appears good, and the majority of the ABA Committee rated him "Well Qualified," with a minority finding him "Qualified."

At the hearing on September 11, at which he was introduced by Senators PELL and CHAFEE, the nominee responded satisfactorily to questions on his reasons for resigning from his State court judgeship.

Fifth. William L. Dwyer has been nominated to be U.S. District Judge for the Western District of Washington. The nominee conducts a private law practice in Seattle, WA. This nomination was considered at hearings held on September 11 and October 22, 1987, at which I presided.

Since 1957, Mr. Dwyer has been a partner in the Seattle firm of Culp, Dwyer, Guterson & Grader, where he has conducted a general litigation practice. Prior to that, he served as a first lieutenant in the Judge Advocate General's Corps. The nominee is 58 years old, and holds degrees from the University of Washington, the University of Washington School of Law, and the New York University School of Law. Mr. Dwyer is the author of the "Goldmark Case," an award-winning book about a major libel trial in the early 1960's. He appears to be highly regarded throughout the legal community in Seattle, and was rated exceptionally "Well Qualified" by the ABA.

At the hearing on September 11, the nominee was introduced by Senators EVANS and ADAMS, and responded to questions concerning his trial experience, his pro bono activities, and his legal advice to the Seattle Public Library in a dispute over the book "Show Me." Mr. Dwyer had advised the library board that it was legal to retain the controversial book, despite requests for the book's removal.

In addition to the nominee, two witnesses testified at the hearing on September 11. Meade Emory, a member of the Seattle Library Board, testified about the circumstances of Mr. Dwyer's retention in the "Show Me" matter and the nature of the legal advice the board received. David Crosby, the founder of a Seattle parents groups, testified about Mr. Dwyer's concern for children and the assistance Mr. Dwyer had given in efforts to shut down an abusive teenage disco in Seattle. Several persons who had requested an opportunity to testify in opposition to Mr. Dwyer were invited to testify at the September 11 hearing but declined to do so.

At the hearing on October 22, which was called at Senator THURMOND's request, several witnesses did appear to testify in opposition to the nomination. Andrea Vangor, executive director of Washington Together Against Pornography, testified that Mr. Dwyer had misread the laws on child pornography in rendering his opinion on "Show Me" and also suggested Mr. Dwyer had not accurately disclosed the term of his membership in the ACLU. Bruce Taylor, general counsel of Citizens for Decency through Law, raised similar concerns about the advice Mr. Dwyer had rendered on "Show Me" and said that the nominee needed to reassure the committee that he would uphold and enforce the child pornography laws. Bruce Fein, of the Heritage Foundation, also testified against the nominee, basing his opposition on Mr. Dwyer's book, the "Goldmark Case." In Mr. Fein's view, the book demonstrates that the nominee is closed-minded toward conservatives.

Five additional witnesses testified in favor of the nominee at the October 22 hearing. William Gates, former president of the Washington State Bar Association, testified that Mr. Dwyer has an outstanding reputation in the Washington legal community. Patrick Fitzsimons, the Seattle Chief of Police, testified about Mr. Dwyer's commitment and assistance to law enforcement in Seattle. Robert Lasnik, chief of staff for the King County Prosecuting Attorney, also testified about Mr. Dwyer's commitment to law enforcement, including his assistance to the prosecuting attorney in fighting child victimization. Michael Zeitner, past president of a Seattle parents group, also testified about Mr. Dwyer's activities assisting victimized children. Judith Krug, of the American Library Association, testified that no library has ever been prosecuted for retaining the book "Show Me."

At the conclusion of the October 22 hearing, Mr. Dwyer was questioned further about his opinion in the "Show Me" matter, about statements made in the "Goldmark" book, about his views on judicial activism, and about his membership in the ACLU. In responding to these questions, Mr. Dwyer laid out his full legal reasoning on the "Show Me" matter. He stated that he believes wholeheartedly in the child pornography laws, and would act to uphold and enforce them. He also defended his statements in the "Goldmark" book and provided documentation for the dates of his membership in the ACLU.

Mr. President, the Judiciary Committee carefully examined this nomination. The two hearings lasted over 7 hours in all, and 10 witnesses were heard, in addition to the two Senators from Washington and the nominee himself. Based on this extensive record, the Judiciary Committee, without objection, reported the nomination favorably for consideration by the full Senate.

As the Senator who presided over both the hearings on the Dwyer nomination, I am as familiar with the record as any other member of the committee. In my view, William Dwyer is one of the most highly qualified district court nominees to come before the Senate in this or any other year in recent history. He has the enthusiastic support of prominent members of the Washington bar, or civic leaders in his community, indeed of everyone who is familiar with the totality of his record.

These endorsements are important, but they do not tell the whole story. As I prepared for and presided over these hearings, I had a chance to observe how the nominee responded to harsh criticisms leveled at him by those who do not know his full record. I saw how he handled the introduction of irrelevant issues, such as how he had voted in past Presidential elections. In my view, such unprecedented questions have no legitimate place in the judicial confirmation process, and I advised the nominee that he was not required to answer them. But he did answer these questions, just as he responded to other criticisms, with candor, patience, and firmness. Mr. Dwyer's behavior at the hearings told me that he is not only a nominee with outstanding credentials; he is also a man with the decisiveness to "call them as he sees them," and with the courage to stand by his convictions. He is, in short, the kind of nominee who

will be a credit to the Federal bench. I urge my colleagues to act promptly and favorably on this nomination.

In conclusion, Mr. President, let me say a word about the work of the Judiciary Committee in considering judicial nominations. This is one of the most important responsibilities of our committee, and one that we take with the utmost seriousness. Senators on both sides of the aisle have worked hard and have worked together to give judicial nominations expeditious and thorough consideration.

As of today, the committee has reported to the full Senate 34 nominations to the Federal courts. In virtually every case, these nominations have been accompanied by a statement of the principal issues examined during the nominations process, and a description of how the committee has resolved them. There will be many more such reports in the week ahead. Nine additional nominations are pending action by the committee, and we have embarked on an ambitious hearing schedule for at least a dozen more nominations during the month of November. Working together, we will continue to examine each nomination on its merits, and to report to the Senate on our conclusions.

This is the way the Judiciary Committee has handled judicial nominations all this year. Even when the committee had to focus its attention on the nomination of Judge Bork, we continued to consider nominations to the lower Federal courts. In fact, while the Bork nomination was pending before the Senate, the committee held 5 hearings on a total of 15 judicial nominees, including most of those now before the Senate. As the Senator who has presided at most of the nominations hearings that have been held, I am proud of this record, but I am also mindful that it could not have been compiled without the active cooperation of other members of the committee, including the Senators from Ohio [Mr. METZENBAUM], Alabama [Mr. HEFLIN], and Illinois [Mr. SIMON]. The Senator from South Carolina [Mr. THURMOND] deserves special mention in this regard. No one has worked harder than he has to make sure that the judicial nominations process works fairly, carefully and expeditiously, with the goal of insuring for the American people the best possible Federal judiciary.●

## ORDERS FOR TUESDAY, NOVEMBER 3, 1987

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I will just lay out the program for next week and that will be it. I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, after the two leaders have been recognized under the standing order, there be a period for the transaction of morning business to extend not beyond the hour of 10:30 a.m., that Senators be permitted to speak during that period for morning business for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the orders have been entered authorizing the majority leader to proceed at any time after consultation with the distinguished Republican leader or his designee to Calendar Order 385, S. 1663, the Child Abuse Prevention and Treatment Act; Calendar Order 306, S. 1539, the Federal Railroad Safety Act; Calendar No. 256, S. 1293, a continuing authorization for the independent counsel.

Mr. President, I will proceed under that order on Tuesday next to either or both, Calendar Order No. 385, the Child Abuse Prevention and Treatment Act, and Calendar Order No. 256, S. 1293, the continuing authorization for the independent counsel.

That would be my intention. I will have consulted with the distinguished minority leader by virtue of the statement today in this RECORD and he will be informed of that and he or his designee, of course, will be here on Tuesday and we will proceed to one or the other or both of those measures.

There is a time agreement on Calendar Order No. 256.

Mr. President, there will be rollcall votes on Tuesday next. I will not move that the Sergeant at Arms be requested to secure the attendance of absent Senators as of the first thing on Tuesday next. It may not need to be done at all. I just urge that Senators, managers, and ranking managers of the two measures that I mentioned, be here and ready to proceed.

Then, on Wednesday I may proceed to the energy, water appropriations bill, having already secured an order that the majority leader be authorized to do so after consultation with the Republican leader or his designee.

So, I hope that all Senators will have a good weekend, will be here and ready to do business on Tuesday.

Mr. President, one final unanimous-consent request that I failed to do. I ask unanimous consent that Calendar Order No. 387, S. 1801, be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

## RECESS UNTIL 10 A.M. TUESDAY, NOVEMBER 3, 1987

Mr. BYRD. Mr. President, again with my thanks to the Republican leader and also to the acting Republican leader, Mr. EVANS, I move, in accordance with the order previous entered, that the Senate stand in recess until the hour of 10 o'clock on Tuesday morning next.

The motion was agreed to, and at 3:55 p.m., the Senate recessed until Tuesday, November 3, 1987, at 10 a.m.